

*United States Court of Appeals
for the Second Circuit*



APPENDIX

75-2071

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA ex rel.
AMERICO LLUVERAS,

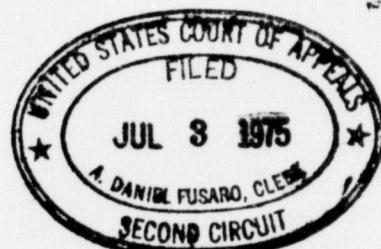
Petitioner-Appellee,

-against-

HON. J. EDWIN LAVALLEE, Superintendent,
Clinton Correctional Facility, etc.,

Respondent-Appellant.

APPENDIX



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Relevant Docket Entries

U.S.A. ex. rel Americo Lluveras vs. Warden, Clinton State Prison

JUDGE PALMIERI

APP. 49

DATE	PROCEEDINGS
Feb.4, 71	Filed petition for writ of habeas corpus.
Feb.4, 71	Filed Order granting the filing thereof, without prepayment of fees. Mansfield J.
Mar.10-71	Filed MEMO-END. on letter addressed to Pro Se Clerk, Mr. Robert Marin, requesting an additional 20 days to answer the petition. Application granted. So ordered. Sugarmen, C.h.J. (mailed notice).
Mar 29, 71	Filed respondent affidavit in opposition to application for writ of habeas corpus.
Jun 2-71	Filed MEMO-END. on petition for writ filed 2/4/71. The petition must be denied. No certificate of probable cause will issue. It is so ordered. Palmieri, J. (mailed notice).
Oct.26-71	Filed Mandate of the U.S.C.A. Ordered that the motion for certificate of probable cause and for assignment of counsel is granted to the extent that the judgment dismissing the writ is vacated and the district court is directed to conduct an evidentiary hearing on the issue of the voluntariness of Lluveras' confession signed by 3 Judges. Friendly, C.J., Mulligan, C.J. and Timbers, C.J. (mailed notice).
Mar 19-73	Filed Order that Dr. Milford Blackwell be and hereby is appointed, authorized, and directed by the Court to confer with the relators attorney, and to testify as to the effects of narcotic withdrawal on voluntariness of the relators confession and ordered that the U.S. Marshal of the S.D.N.Y. pay the costs of said witness pursuant to 28 U.S.C. and that a certificate to that effect be issued. Palmieri, J. M/N
Aug 21-74	Palmieri, J.
Jun 6-75	Filed transcript of record of proceedings dated Nov 31, 1974
Jan 29-75	Filed Petitioner's Post Hearing Brief
2-18-75	AMERICO LLUVERAS= Filed CJA-21, appointment of Milford Blackwell, M.D., 115-11 Merrick Blvd, Jamaica, NY 11434--PALMIERI, J. (Copy #2)
	AMERICO LLUVERAS= Filed CJA-21, Copy #2, Mailed original Copy (CJA) #1 to A.O., Wash, D.C., for payment.
2-26-75	Filed Opinion #41954....This is a petition for a writ of h/c pursuant to 28 U.S.C. § 2254. Petitioner seeks to vacate his conviction on the ground that the confession received against him at trial was involuntary because obtained while he was undergoing narcotic withdrawal. For reasons hereinafter stated is granted.....Palmieri, J. m/n
2-28-75	Filed NYS's Post - Hearing Memo of Law
2-28-75	Filed Petitioner's Post Hearing Brief
2-28-75	Filed Petitioner's Brief.
3-21-75	Filed Order - Ordered and Adjudged that the petition for a writ of habeas corpus herein be and the same is hereby granted. Ordered, that if a timely notice of appeal is filed on behalf of respondent, this order and judgment of the Court herein shall be stayed pending determination thereof.---PALMIERI, J.
4-8-75	Filed Notice of Entry of Order dated 3-20-75 by Respondent.
4-17-75	Filed Relator's Affidavit of Service of Notice of Entry.
4-21-75	Filed Respondent's Notice of Appeal to USCA from order entered 3-21-75.... Notices mailed 4-22-75 to. Robert N. Cown, Esq.

Petition For Writ of Habeas Corpus

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

THE UNITED STATES OF AMERICA ex rel. : PRO SE 71 CIV. 493
AMERICO LLUVERAS, :
Relator, : APPLICATION FOR
-against- : WRIT OF HABEAS
HON. EDWIN J. LAVALLEE, WARDEN OF : CORPUS PURSUANT TO
CLINTON CORRECTIONAL FACILITY, : TITLE 28, SECTIONS
DANNEMORA, NEW YORK, : 2241, 2243, AND 2254
: IND. # 4546/60
Respondent. :
-----X

The petition of Americo Lluveras, confined at Clinton Correctional Facility, Box B Dannemora, N.Y. herein respectfully shows:

That the said Americo Lluveras, (hereinafter to be known as "relator"), the person on whose behalf this writ is applied for is now imprison and restrained of his liberty at the Clinton Correctional Facility, located at Box "B", Dannemora, New York, in the County of Clinton, and the officer or person by whom he is so imprison is Edwin J. LaVallee, Superintendent of said Correctional Facility.

That the relator has not been committed and is not

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detained by virtue of any Judgment, decree, final order or mandate issued by a Court or Judge of the United States in a case where such Court or Judge has exclusive Jurisdiction under the laws of the United States; Nor have acquired exclusive jurisdiction by the commencement of legal proceeding in such court, or by virtue of a final Judgment or decree of a competent tribunal made in a special proceeding, entitled for any cause, except to punish him for contempt; or by virtue of any exclusive or process issued upon Judgment, decree or final order.

That the cause or pretense of such imprisonment and restraint to the best knowledge and belief of relator, is a certain committment warrant, order or process issued by the Honorable Irwin D. Davidson, Judge of the Supreme Court of New York County, State of New York.

That relator brings this petition before this Court under the Civil Rights Act of February 5, 1867, c. 28 Section 1, 14 stat. 385-386; Title 28, Sections 2241, 2243 and 2254.

Statement of Prior Proceedings

Relator was convicted (December 15, 1960) after a jury trial of three counts of Robbery in the First Degree, and sen-

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lief, in view of Jackson v. Denno, (378 U.S. 32 L.W. 4620) and to seek relief by Coram Nobis, to Court of Jurisdiction, via Huntley Hearing, decided (January 7th, 1965, People v. Huntley, 15 N Y 2d 72).

By petition dated the 21st day of September, 1965, petitioner submitted an application for a Huntley Hearing, and on the 7th day of February, 1966, an order was submitted to have the petitioner in the County of New York, Supreme Court, (Davidson, J.) for a Huntley Hearing which was subsequently held, after which the petitioner was denied (June 22nd, 1966). From that denial the appeal was subsequently appealed to the United States Supreme Court.

An appeal was taken to the Appellate Division, First Judicial Department, from an order of the Supreme Court (Davidson, J.) which denied petitioner relief sought.

On February 11th, 1969, the Appellate Division, First Judicial Department, unanimously affirmed the Supreme Court (Davidson, J.) order, (People v. Lluveras, 31 A D 2d 892 [1969]). No opinion.

An application for leave to appeal to the Court of

Petition

Appeals from the Appellate Division, First Judicial Department, entered the 11th day of February, 1969, was denied by the Honorable Chief Justice, Stanley H. Fuld, on the 20th day of March, 1969.

A motion for reapplication for leave to appeal to the Chief Justice, and associate Justice of the Court of Appeals from the order of the Honorable Stanley H. Fuld, entered on the 20th day of March, 1969, was denied by the Honorable Chief Justice, Stanley H. Fuld, on the 19th day of June, 1969.

A petition for a writ of Certiorari to the Supreme Court of the State of New York, was submitted to the United States Supreme Court, and filed on September 18th, 1969, as no. 990 Misc., October Term, 1969.

On December 15th, 1969, the Honorable Court denied the petition for writ of Certiorari.

Petitioner-relator has exhausted all his remedies on this issue in the Courts of the State of New York, and in the United States Supreme Court.

Petitioner-relator now seeks relief by way of a writ of habeas corpus in this Honorable Court.

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Statement of Facts

On May 6th, 1960, the relator was booked for an attempt robbery of a liquor store; a sheet-metal factory robbery, and a felony Murder, after being interrogated throughout the night of May 5th, 1960, upon relator's voluntary surrender of his person's to police, at 4:00 P.M. on the 5th day of May, 1960. Relator was taken to Headquarters, down-town, wherein, he was photographed, and at approximately 2:00 P.M. of May 6th, 1960, relator was taken before a Magistrate in Felony Court, New York County. A date was set for a hearing and relator was then taken to City Prison, at 125 White Street, New York.

On May 11th, 1960, relator and three of his co-defendants were taken to Felony Court, and the Magistrate, therein, assigned relator an attorney, (Mr. Levy). The relator asked the Magistrate for a hearing on the said charges. The Magistrate asked relator, if he had an attorney, to which he replied, "Yes", and the Magistrate informed relator that, the lawyer would speak for petitioner and adjourned the case.

On June 8th, 1960, petitioner-relator was indicted for an Attempt Robbery in the First Degree, (Ind. #2599/60); Robbery

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in the First Degree, (Ind. #2603/60). Shortly, thereafter, relator was arraigned on said Indictments #2599/60; #2603/60, and entered a plea of not guilty. On June 30th, 1960, relator was indicted for Murder in the First Degree, (Ind. #2970/60) and three (3) attorneys were assigned by the Court to represent relator on said Murder Indictment. In the month of July, 1960, relator appeared in court to be arraigned on the Murder Indictment #2970/60. That after relator has been held in City Prison for some time thereof, relator was taken from City Prison to a Police Precinct and, subsequently, booked for an alleged "Card Game" robbery, committed at 452 Fort Washington Avenue. Upon an order forwarded to the office in charged of the City Prison, 125 White Street, Department of Correction For Men Detention.

On October 27th, 1960, the Honorable Joseph A. Sarafite committed petitioner-relator to City Prison on a bench warrant, issued on the 25th day of October, 1960, Indictment #4546/60, filed on the 24th day of October, 1960, and, upon which the following inscriptions are enrolled: "1B na"; "Ibid"; or "In the same place"; "Not arrested" the letter "N.A. by relator's name being crossed out and "P" Prisoner inserted.

On the 9th day of November, 1960, before the Court of

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General Sessions (Hon. Sarafite) relator was assigned three (3) attorneys by the Court to represent relator on Indictment case #4546/60. Being the one and same attorneys assigned by the Court to represent relator on case #2970/60. Relator was arraigned on November 9th, 1960 on Indictment #4546/60, for Robbery in the First Degree and pleaded not guilty.

On November 21th, (sic) 1960, a Jury trial was had upon the ensuing Indictment #4546/60.

The relator and four co-defendants were indicted on three counts of Robbery in the First Degree (count one, five, and six), and the Grand Larceny in the First Degree (count two), Assault in the Second Degree (count three), and Criminally Possessing a pistol (count four) pursuant to the indictment filed on October 24th, 1960.

The indictment against James Sease, one of the co-defendants was severed (November 22nd, 1960) and he testified for the prosecution as a state witness.

The relator and three co-defendants proceed to trial. Luther Coleman, Tara Ghose, and Edwin Cintron, were tried with

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the relator; however all of the remaining defendants who originally pleaded not guilty, after relator's reappearance on the witness stand changed their pleas from not guilty to guilty, and after their severance on the 12th day of December, 1960, the trial proceeded against the relator, four weeks after being tried with co-defendants before the Jury panel.

The relator has submitted a pro se brief which is now pending in the Appellate Division, First Judicial Department, 27 Madison Avenue, from an order of the Supreme Court (Davidson, J.), New York County, that will be heard in the January Term. Wherein, he has challenged the Constitutionality as to the admissibility of severance without confrontation of the co-defendants who statements, and implication before and after their cases had been severed were introduced at his trial, as violations of his Sixth and Fourteenth Amendments Right to Due Process of law. (Bruton v. United States).

On the 15th day of December, 1960, the Jurors found relator guilty on three counts of Robbery in the First Degree.

On the 1st day of March, 1961, the Honorable Irwin D.

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Davidson, sentenced petitioner-relator to State Prison for a term of not less than ten (10) years nor more than thirty (30) years on each count in said Indictment. Sentences to run concurrently. An appeal was taken as is set forth herein in relator's statement of "Prior Proceedings".

After having been in Sing Sing State Prison for about one (1) month, the relator was taken back to the Supreme Court (Davidson, J.), New York County, on the three charges for which he was originally arrested and taken before a Magistrate Court, on the 6th day of May, 1960, and subsequently indicted. Murder in the First Degree, (Ind. #2970/60); Attempt Robbery in the First Degree, (Ind. #2599/60); and Robbery in the First Degree, (Ind. #2603/60).

Relator was informed by his Counsel (Mr. Pinckey) that the District Attorney (Mr. Sandler) was willing to let him accept a plea of Manslaughter to cover all the cases, the relator wanted a trial on the Murder charge, and after several adjournments, a Motion was made by relator's counsel, and the Court granted a (D.O.R.) Dismissal own Recognizance, with the understanding that if the Assistant District Attorney was not ready for trial within

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thirty (30) days the Murder Indictment #2970/60, was to be dismissed. The Assistant District Attorney asked for Six (6) months, but the Court said thirty (30) days, in accordance with the motion submitted by relator's counsel. Wherein one (1) month later said Indictment #2970/60 was dismissed (Hon. Davidson, J.).

The relator was then asked by the Court if he was ready to plead on the other charges, to which the relator's counsel asked for an adjournment.

Relator subsequently plead guilty to an Attempt Robbery in the First Degree (Ind. #2599/60) to cover Indictment #2603/60 in the First Degree. Wherein, the sentence imposed was no less than five (5) nor more than ten (10) years to run consecutive with the ten (10) to thirty (30) years sentence imposed on March 1, 1961, Ind. #4546/60 (Hon. Irwin Davidson, J.).

Reason For Granting The Writ

This case necessarily presents questions as significant and demanding of resolution by this Court in the area of the certainty of State Criminal Statutes and Court's Judgment, required under the due process clause of the Fourteenth Amendment,

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interpreting New York State law, for its Constitutionality under the Federal Constitution, for this case presents questions that make it necessary to reconsider and to evaluate what the provision of State laws which are mentioned throughout this petition means, since the Supreme Court of New York State refused to resolve the issue.

It presents one of the most critical question left open by this Court today, on the Constitutional Rights of an accused person also the Canons of Professional Ethics, and whether or not a defendant is denied a fair and impartial thereby. These are questions that at long last should be resolved once and for all by this Honorable Court, if the demands of Justice is to be met.

Argument of Relator

Relator content that in a Huntley Hearing, an attempt to deceive the Court into forming a premature opinion that relator's claims did not warrant the relief sought, the prosecutor elected to disregard the law statutes which supported the relator's claim and the successful invocation of the relator for redress on the miscarriage of Justice, on critical violations.

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The primary duty of the lawyer engaged in a public prosecution is not to convict, but to see to it that the cause of Justice is served The suppression of facts is highly reprehensible, See, Canon 5, Canons of Professional Ethics - American Bar Association, and further that, "it is not candid or fair for a lawyer to knowingly misquote the language of a decision or textbook, or with the knowledge of its invalidity to cite as authority, a decision that has since, been overruled, or statutes which have been repealed", See Canon 22.

In said Huntley Hearing, Detective McPartland, stated that:

"The petitioner confessed to the robbery very early in the evening - some - where - around 9:30, or 10:00 P.M. (191). He did not just confess for no reason at all - his confession was brought about by confrontation with his victims, 'especially, one woman that he severely beat on the head during a holdup of a card game. And after we showed him that we knew he did it, he readily admitted it.'

Early in the evening, the petitioner was taken to the Park View Hotel, for confrontation in connection with the Murder, but no identification was satisfactorily established (201, 203, 221, 224, 226). The petitioner never did admit to the Robbery-Murder (225); however, by the end of the

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From the period of May 5th, 1960 to November 9th, 1960, your petitioner-relator was not represented by Counsel. That in accord with the laws of New York State, as well as the Federal Standards of Criminal Procedure the effective representation as well as the right to counsel is not prerequisite to any special precedent or condition, and is a fundamental substantial right.

Your relator was deprived of the right to counsel at the most critical stage(s) of the proceeding(s). The arrest proceedings --- which is the very inception of the complaints lodged herein.

Section 3, of the Code of Criminal Procedure, states:

"No person can be punished for a crime except upon legal conviction in a Court having Jurisdiction thereof."

Which is supported in sequence, Section 8, C.Cr.P. note #61:

"Under this section, accused, if he desires such aid, is entitled to aid of Counsel throughout the criminal action."

See also, N.Y.S. Const. Art. #1 Sec. 6, in cross references to sections 188, 189 of the C.Cr.P. under Art. #1

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section 11 of the N.Y.S. Const., which states, in part:

"No person shall be denied the equal protection of the laws of this State or any subdivision thereof."

Article #1 Sec. 6 of the New York Const., goes further in part:

"... Nor shall he be compelled in any criminal case to be a witness against himself ... "

The arrest of your relator was a sham, used to prevent him from exercising his rights, and to entirely deprive relator of the opportunity or benefits provided by statute. - Section 144, C.Cr.P. provides that:

"The importance of an accused person's right is clarified by statute, and upon commencement of the prosecution the statute (C.Cr.P. 145) requires that, "The information upon legal proof must inform the accused of the specific charge against him ... "

The section further states, in part:

"The information is the allegation made to a Magistrate, that a person has been guilty of some designated crime."

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The complaint herein, is that relator was arrested on May 5th, 1960, and desirous of examination of any charges that could be presented to the Court. And that relator charges the arresting officers with the Criminal Act of violacing his Constitutional Rights by causing an undue delay in the arraignment of relator in violation of Section C.Cr.P. which requires:

"The defendant must in all cases be taken before the Magistrate without unnecessary delay ... "

And by violating relator's rights in such manner, the injury to the relator's right was compounded by a gross deprivation of confrontation when adequate representation would have assured the needed defense in the instant case.

Your relator was not assigned counsel to represent him in the charge made against him, nor was he informed of the charge against him until he was arraigned in Supreme Court (forma [sic] General Sessions) New York County, on November 9th, 1960, at the Criminal Court Bldg., 100 Centre Street, New York, New York.

Relator was taken before a Magistrate, however, some twenty-two (22) hours subsequent to his voluntary surrender, and even then, it was on three other charges, not for the crimes

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which are alleged to have been committed at 452 Fort Washington Avenue.

The Police are guilty of oppression and neglect of duty when they wilfully detain a prisoner without arraigning him before a Magistrate within a reasonable time, Code Criminal Procedure Section 165 People v. Mummiani, 258 N.Y. 394, 180 N.E. 94: "The conclusion is inescapable that they do this for the purpose of subjecting him to an inquisition impossible thereafter." c.f. lawlessness in law Enforcement, vol. IV of the reports of the National Commission on law observance and Enforcement, June, 1931.

The relator was held incommunicado twenty-two (22) hours (which in and of itself is a crime Section 1844 Penal Law) that was apparently done for one single reason, to compel the relator to be a witness against himself (Section 10 of the Code of Criminal Procedure; 5th and 14th Amendments of the United States Constitution; Article 1 Section 6 of the New York State Constitution).

In effect, relator was denied any effective pre-indictment remedies available to him by the detectives (Section 1844 Penal Law).

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The Assistant District Attorney, Mr. Sandler, who was acting under color of law, and his corroborators, conspired to violate and did deprive relator of his Constitutional Rights guaranteed by the Fourteenth Amendment of the Constitution.

Relator clearly prints the salient question: "Which supersedes which?" The dictates of the Constitution of the United States and that of New York State's Statutory laws; or the inconsistent and non-conformity by those officials of the law who are duty bound to protect the poor and weaks constitutional rights to due process of law; or to contrive by insidious methods to defeat the process of fair Justice?

Parenthetically, it should be noted that the commission of an ordinary crime is neither "Rebellion or "Invasion" and, even if it were, it is a serious question whether even the President of the United States could Constitutionally suspend the right (Mr. Justice Taney, in Ex Parte Merryman, 246 Fed. case No. 9 487, (1861), wrote that:

"Only Congress has such power and if the President has not the power it would seem odd that the framers should vest it with the Police Department of New York City."

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The relator was taken to a small room in the 24th Precinct for questioning and the results of that questioning was a physical beating while he was in a state of narcotic withdrawal that induced him to confess falsely and the illegal arrest, therefore, was based upon the results of the physical beatings induce from the relator in a state of discomfort sufficient to lend to a confession.

In United States ex rel. Charles Everett v. Murphy,
Docket #28213 (March 19, 1964) Smith, J., said:

"From the uncontroverted evidence, however, it is established that Everett, was arrested illegally, held incommunicado and questioned extensively without counsel or his right to remain silent, and the confession followed upon deception and false promise of Assistance if he should confess."

The relator made a statement to the District Attorney, Mr. Sandler, on the 6th day of May, 1960, at 8:05 A.M. The question and answer statement before a Court Stenographer, in the Police Station, which lasted until 9:30 A.M. which was introduced in evidence at the Huntley Hearing as People Exhibit II.

The statement which relator gave Mr. Sandler, was that he committed a Card Game Robbery at 157th Street between 7th and

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8th Avenue, which is actually a play ground several miles away
from 452 Fort Washington Avenue, in no possible way identical,
and where no such crime had been committed. In submitting relator's statement to a Jury as a basis of self guilt of a participation in the crimes charged, the District Attorney, completely disregarded the fact that the statement was a non-incriminatory statement, for from its content no inference of participation in the crimes arising at 452 Fort Washington Avenue, can be drawn.

In Thompson v. Louisville, 362 U.S. 199 (1960) the Court said:

"Congress has no more Constitutional power to tell a Jury it can convict upon any such force and baseless inference, than it has the power to tell Juries they can convict a defendant of a crime without any evidence at all from which inference of guilt could be drawn."

Relator's reasons for giving a fictitious statement
regarding a Card Game Robbery were to prevent the detectives, who
were investigating a homicide Robbery, from further beating him
into admitting to a homicide Robbery, which he did not commit.

The crimes with which the relator was charged arose out of one incident which occurred at 452 Fort Washington Avenue, New

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York, on April 23rd, 1960. The victims testified that a number of People were playing cards in an apartment on the third floor when four men, each of them masked, entered the apartment, two of them having guns, and took jewelry and property from the participants. None of the victims identified any of the defendants as the persons who had committed the crimes.

The case against relator does not look impressive. Relator was not identified prior or subsequent to Indictment #4546/60. Nor was he identified at the trial by the complaining witnesses.

This Honorable Court can observe that the Supreme Court of the United States, in Fay v. Noia, 372 U.S. 391, and in Reck v. Pate, 367 U.S. 433, gave retroactive effect to tainted confessions. In both of these situations these cases came by a Federal Habeas Corpus and overturned the long standing confessions as tainted. That in the Fay's case this result was obtained after the denial of the state's post-conviction relief of Coram Nobis. See, also, Gideon v. Wainwright, 372 U.S. 335, where the Court gave retroactive effect on this problem.

The principle was sustained in Linkletter v. Walker,

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381 U.S. 618, and it applied to confessions.

In Linkletter the court refused to apply retroactivity to an illegal search and seizure, but it observed the fact to test that:

"Once the premise is accepted that we are neither required, nor prohibit from applying a decision retrospectively, we must then weight the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retroactive operation will further or retard its operation."

In Johnson v. New Jersey, 34 L.W. 4592 (384 U.S. 719), the Court stated:

"At the same time, our case of law on coerced confessions is available for persons whose trials have already been completed ... " Prisoners may invoke substantive test of voluntariness which, because of the persistence of abusive practice, has become meticulous through the years."

To emphasize their statement in that case that the old subjective tests were still available they applied them to another case, (See Davis v. North Carolina, 34 L.W. 45 97 (384 U.S. 737)

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[June 20, 1966] on the same day, and stated therein:

"The Review of voluntariness in cases in which the trial was held prior to our decision in Escobedo and Miranda is not limited in any manner by these decisions." Also stated.

"As we pointed out in Jackson, however, the non-retroactivity of the decision in Miranda does not affect the duty of courts to consider claims that a statement was taken in circumstances which violated the standards of voluntariness which had begun to evolve long prior to our decision in Miranda and Escobedo."

Relator-Petitioner, therefore believes that while, as those defendants, the test should be available to him. That the Courts have long settled the rules that if a confession which is involuntarily as a matter of law is admitted in evidence, the conviction must be reversed, regardless of the other evidence which might tent (sic) to demonstrate guilt. People v. Leyra, 302 N.Y. 352 (1951).

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CONCLUSION

That no previous application has been made to this Honorable Court for this relief.

WHEREFORE, upon the facts and authorities cited herein, in accordance with the provisions of the United States Constitution, this relator prays that this writ of habeas corpus issue, directed to the Honorable Edwin J. LaVallee, Superintendent of said Clinton Correctional Facility, Dannemora, New York, or whosoever has the custody of Americo Lluveras, the relator herein, commanding him to produce the body of the said relator at the United States District Court, for the Southern District of New York, Foley Square, New York City, on the 25 day of January, 1971, at 10:00 A.M. of that day, or as soon thereafter as this relator can be heard for an order to adjudicate the question presented herein and to determine whether the relator shall be release from custody, or for an order releasing relator from custody, pursuant to the power of this Honorable Court, and entering final Judgment herein.

(Sworn to by Americo Lluveras January 26, 1971).

Affidavit in Opposition

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA ex rel. :
AMERICO LLUVERAS,

Petitioner,

: AFFIDAVIT IN OPPOSITION
TO APPLICATION FOR WRIT
OF HABEAS CORPUS

-against-

: Pro Se 71 Civ. 493

HON. J. EDWIN LaVALLEE, Superin-
tendent, Clinton Correctional
Facility, Dannemora, New York,

:

Respondent.

:

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STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ROBERT S. HAMMER, being duly sworn, deposes and says:

I am an Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, attorney for respondent herein. I make this affidavit in opposition to petitioner's application for a writ of habeas corpus.

It appears from the petition, that petitioner is

currently serving three concurrent prison sentences of ten to thirty years imposed on him by the former Court of General Sessions of New York County (now merged into the Supreme Court), Hon. Irwin D. Davidson on March 1, 1961 upon the verdict of a jury finding him guilty of three counts of robbery, first degree (N.Y. Penal Law of 1909 § 2124) as charged in Indictment No. 4546/1960. The conviction was affirmed, 19 A D 2d 525 (1st Dept. 1963), and leave to appeal to the New York Court of Appeals pursuant to N.Y. Code of Crim. Pro. § 520 was denied on July 9, 1963 (Fuld, J.).

Following the decisions of the Supreme Court of the United States in Jackson v. Denno, 378 U.S. 32 (1964) and of the New York Court of Appeals in People v. Huntley, 15 N Y 2d 72 (1965), petitioner instituted a coram nobis proceeding challenging the voluntariness of certain confessions and admissions introduced against him at trial. The "Huntley" hearing was held before Mr. Justice Davidson beginning May 6, 1966, who denied the petition on June 22, 1966. The Appellate Division affirmed, 31 A D 2d 892 (1st Dept. 1969), and leave to appeal to the New York Court of Appeals was denied on March 20, 1969 (Fuld, Ch. J.). Certiorari was denied sub nom. Lluveras v. New York, 396 U.S. 457 (1969).

Petitioner also refers in his papers to another coram nobis appeal that was pending at the time of the filing of the petition herein in which "Bruton" issues had been raised and decided adversely to him by Mr. Justice Davidson. The Appellate Division affirmed, ____ A D 2d ____ (1st Dept. 1971), N.Y.L.J., January 29, 1971, p. 2, col. 2 and leave to appeal to the New York Court of Appeals was denied on March 2, 1971 (Fuld, Ch. J.). Petitioner does not, however, litigate this "Bruton" claim in the instant proceeding.

The instant proceeding is, for practical purposes, a relitigation of the Huntley hearing. Petitioner contends that Detectives McPartland and Coyne gave perjured and misleading testimony because they referred in their hearing testimony to show-ups and arraignments that took place May 5 and 6, 1960 in connection with a murder charge that was later dismissed and two robbery charges that were later disposed of by a plea of guilty to attempted robbery and a sentence of five to ten years consecutive to the sentence challenged herein. However, this has no bearing upon the voluntariness of petitioner's confessions and admissions. Once petitioner was brought before a Magistrate he was no longer in police custody but in the custody of the City Department of Correction.

Neither was there any undue delay in commencing the prosecution. In view of the pendency of the other murder and robbery charges, it is not unreasonable that the robbery indictment was not filed until October of 1960.

The voluntariness of petitioner's confessions and admissions is demonstrated by the minutes of the Huntley hearing, which together with the minutes of petitioner's trial will be furnished to the Court for its examination. These minutes are no loan to the Attorney General from the Supreme Court of New York County.

The State "Huntley" hearing was full, fair and complete. No further hearing in this Court is required on this question. Townsend v. Sain, 372 U.S. 293, 318 (1963).

The claim that petitioner's rights were prejudiced by the failure to assign him counsel on these charges is without any factual merit, since he had access to several attorneys during the period in question. Moreover, Miranda v. Arizona, 384 U.S. 436 (1966) insofar as it might have required the assignment of counsel before any questioning occurred, is not retroactive. Johnson v. New Jersey, 384 U.S. 719 (1966).

It should be noted that petitioner has recently been

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transferred to Green Haven Correctional Facility, Stormville, New York, whose Superintendent is Hon. John L. Zelker, and now the proper respondent.

WHEREFORE, it is respectfully requested that the petition be dismissed. (Sworn to by Robert S. Hammer, March 29, 1971).

Memorandum Decision Dismissing Petition

JUNE 1, 1971:

Petitioner is presently serving three concurrent prison sentences of 10-30 years following a jury conviction of 3 counts of robbery in the Court of General Sessions of New York County. The conviction was affirmed, 19 A.D.2d 525 (1st Dept. 1963), and leave to appeal to the New York Court of Appeals was denied on July 9, 1963. Following the decisions of the United States Supreme Court in Jackson v. Denno, 378 U.S. 32 (1964) and the New York Court of Appeals in People v. Huntley, 15 N.Y.2d 72 (1965), petitioner instituted a coram nobis proceeding challenging the voluntariness of certain confessions and admissions introduced against him at trial, claiming that these had been obtained by force, threats, and coercion, that he was not advised of his right to remain silent, and that he was not advised of his right to counsel. Mr. Justice Davidson denied the petition on June 22, 1966, finding beyond a reasonable doubt that "the statements which the petitioner made to the District Attorney were freely and voluntarily made....[and] that the statements were not the product of police brutality either mental or physical, or any other improper conduct exerted by the police against the petitioner." This decision was affirmed by the Appellate Division,

31 A.D.2d 892 (1st Dept. 1969), and leave to appeal to the Court of Appeals was denied March 20, 1969. Certiorari was denied sub nom. LLuveras v. New York, 396 U.S. 457 (1969).

Petitioner now presents the same claims presented at the Huntley hearing. Although he claims that police detectives testifying at that proceeding gave perjured and misleading testimony, he offers no evidence to substantiate that claim. The court has carefully considered the transcript of that hearing and finds that it was full, fair and complete, and in accordance with the requirements of Townsend v. Sain, 372 U.S. 293, 318 (1963). Petitioner's claims regarding his right to counsel prior to questioning are well settled by Johnson v. New Jersey, 384 U.S. 719 (1966) which holds Miranda v. Arizona, 384 U.S. 436 (1966) to be nonretroactive.

It appears, therefore, that petitioner has presented no claim cognizable by this court. The petition Must be denied.

No certificate of probable cause (28 U.S.C. § 2253) will issue because there is no point of any substance to be raised on appeal. In respect to the in forma pauperis statute (28 U.S.C. § 1915(a)), it is certified that any appeal from this order is

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not taken in good faith. In this context good faith is judged by an objective standard, and, if an appeal is frivolous, it is not taken in good faith. Coppedge v. United States, 369 U.S. 438, 445 (1962); United States v. Visconti, 261 F.2d 215, 218 (2d Cir. 1958), cert. denied 358 U.S. 954 (1959).

It is so ordered.

/s/ Edmund L. Palmieri
EDMUND L. PALMIERI
U. S. D. J.

Order of Court of Appeals Remanding Proceeding For Hearing

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals,
in and for the Second Circuit, held at the United States Court
House, in the City of New York, on the thirtieth day of September,
one thousand nine hundred and seventy-one.

United States ex rel. Americo
Lluveras,

Relator,

v.

J. Edwin LaVallee, Warden of Clinton
Correctional Facility, Dannemora,
New York,

Respondent.

A motion having been made herein by relator pro se for
a certificate of probable cause, for leave to proceed in forma
pauperis, and for the assignment of counsel

Upon consideration thereof, it is

Ordered that said motion be and it hereby is granted to the extent that the judgment dismissing the writ is vacated and the district court is directed to conduct an evidentiary hearing on the issue of the voluntariness of Lluveras' confession.

/s/ Henry J. Friendly
HENRY J. FRIENDLY

/s/ William H. Mulligan
WILLIAM H. MULLIGAN

/s/ Wm. H. Timbers
WILLIAM H. TIMBERS Circuit Judges

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

U. S. A. ex-oral ALBERTO LIUVERAS,

Petitioner,

7 L. EDWIN LA VALLEE, Warden Clinton
State Prison,

Respondent.

11 Before:

12 HON. EDMUND L. PALMIERI, District Judge.

13 New York, November 21, 1974;
10.30 a.m.

APPEARANCES:

16 PIERRE N. LEVAL, ESQ., and
ROBERT COWEN, ESQ.,

Atorneys for Petitioner,
One State Street Plaza,
New York, New York 10004.

19 LOUIS J. LEFKOWITZ, ESQ.,
20 By: Robert Hammer, Esq., Attorney for Respondent;
21 State Office Building,
80 Centre Street, 26th
New York, New York, 10017.

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2 (Case called.)

3 THE COURT: Proceed, gentlemen.

4 MR. LEVAL: Your Honor, there is one small
5 matter. Your Honor is aware I have the last few months
6 been working in a campaign of Robert Morgenthau, who has
7 been elected district attorney, and because of that rather
8 vague connection with the district attorney's office, Mr.
9 Hammer asked me if I would check with my client, Mr.
10 Lluveras, if he has any conceivable objection, and he has
11 told me he has no objection, and recognizes no objection
12 and intends to have me continue as his attorney. I will
13 ask Mr. Lluveras to confirm that.

14 MR. LLUVERAS: Yes.

15 THE COURT: I am delighted that Mr. Lluveras
16 has consented. I think he should be congratulated having
17 a person of your talents to represent him, and I want to
18 express my preliminary thanks for your efforts in this case.

19 MR. LEVAL: Thank you, your Honor.

20 Although this case is short, I think the prior
21 history is a little complicated. I think it would serve
22 the Court's purpose for clarification if I gave a short
23 statement as to my contentions, what is in the case and what
24 is not.

25 THE COURT: I will be delighted to hear it.

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2 MR. LEVAL: Thank you, your Honor.

3 Your Honor, on March 1 of 1961, Americo Lluveras
4 was convicted, after trial, of robbery and was sentenced
5 to ten to thirty years in jail. This was in the New York
6 State Supreme Court.7 A confession which he had given was offered in
8 evidence at that trial and received in evidence.9 In 1966, he brought a ^{N.Y.} *coram vobis* proceeding
10 in the United States Supreme Court challenging the voluntari-
11 ness of the confession. The main thrust of that hearing
12 was that the petitioner claimed that the police had beaten
13 him during the nights of his examination, the police denied
14 it, and the Judge believed the police and disbelieved the
15 petitioner and found for the police upholding the voluntari-
16 ness of the confession. Also at that hearing the judge
17 refused to receive evidence of a medical nature concerning
18 the symptoms of physical pain that the defendant who was an
19 addict at the time experienced on account of the withdrawal
20 of the drug. And, because of the judge's refusal to
21 receive that evidence, the United States Court of Appeals,
22 as your Honor knows, ordered that a hearing be held in
23 this *habeas corpus* proceeding to determine the voluntariness
24 of the confession.

25 At this hearing, your Honor, we, the petitioner,

2 do not raise any issue of police brutality or flagrant
3 misconduct of any sort. Those issues were concluded rightly
4 or wrongly by the Judge's opinion in the 1966 hearing, and
5 we will not be presenting to your Honor testimony concerning
6 beatings or anything else. Those have been, at least
7 judicially, laid to rest.

8 The sole issue, as the petitioner sees it,
9 concerns the physical and mental condition of the defendant
10 during the night-long interrogation with particular
11 emphasis on the pains of withdrawal that he experienced
12 and on his condition as a result of being interrogated
13 throughout a long sleepless night, no sleep, and virtually
14 no food throughout the day.

15 Your Honor will hear evidence of the defendant's
16 long history of intensive use of narcotic drugs from the
17 age of about 14 years old, a heavy habit, a 16-hour confine-
18 ment and questioning during the night, some 20 hours
19 elapsing since his last dose of narcotics, and your Honor
20 will hear the expert testimony of a doctor highly qualified
21 in this particular area of specialty which will corroborate
22 the defendant's own testimony as to his pains and feelings
23 during that night.

24 While I believe that the testimony of the doctor
25 is of very great importance in this case and probably of

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2 most importance, I will add that the testimony of the
3 petitioner is also quite important because he himself has
4 to testify as to his own feelings of suffering, and I
5 believe that the People cannot prevail in bearing their
6 burden of showing that the confession was voluntary unless
7 your Honor is convinced and to discredit totally the
8 defendant's statements as to his condition and to consider
9 him a liar on that point. And, on that subject, there-
10 fore, I propose to show the Court that after 12 years
11 imprisonment, the defendant is perhaps the most extraordinary
12 changed man on the face of the earth.

13 We have summoned here, rather they have willingly-
14 ly come, an extraordinary small group of character witnesses
15 for an ex-convict, and there will be a dean of Hunter
16 College, professor of the City University and director of
17 a major educational program, a professor from Maris College
18 where the defendant is now a student and a judge of the
19 Criminal Court of the City of New York.

20 I hope that your Honor will be indulgent. I
21 don't think those witnesses will take very long, but I think
22 their effect will be significant. I hope your Honor will be
23 indulgent to hear their testimony.

24 THE COURT: What is Mr. Illuveras' present
25 status?

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2 MR. LEVAL: He is on parole, your Honor, which
3 I think is scheduled to expire close to the year 2000, and he
4 is a student in college where he has been for three years.

5 THE COURT: The practical effect, I assume, of a
6 decision in his favor would be that it would eliminate any
7 parole supervision, is that right?

8 MR. LEVAL: Not only the parole supervision but
9 also the overhang threat of reconfinement if he fails to
10 adhere to the very, very severe conditions of parole, which
11 are extremely significant. A couple of summers ago when he
12 was busy working in New York on an educational program,
13 vacation from school, he fell into rather a technical
14 violation of parole in that he failed to communicate with
15 his parole officer in Poughkeepsie every two weeks as
16 required and moved from his initial lodging to a different
17 lodging which was something he needed permission for.

2x 18 Before he knew it, he was slapped in jail again,
19 and those are very, very onerous conditions for a man to
20 live under. It's not by any means a mere technicality.

21 THE COURT: How old is he now?

22 MR. LEVAL: He is 36 years old.

23 THE COURT: Thank you.

24 Does the United States Attorney wish to make any
25 statement at this time?

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2 MR. HAMMER: Your Honor, the State will waive
3 opening statement, at least at this time.

4 THE COURT: Excuse me. You are an Assistant
5 Attorney General, Mr. Hammer?

6 MR. HAMMER: That's correct, your Honor. I
7 appear for the respondent, who is the superintendent of the
8 prison.

9 THE COURT: Thank you.

10 MR. LEVAL: Your Honor, Mr. Hammer and I had
11 agreed on a stipulation which settles some of the basic
12 chronology of the facts of the day in question. We're just
13 in the act of signing it. It will be concluded in a second,
14 and we can pass it on to the Court.

15 In addition, your Honor, I have a trial brief
16 which I would like to pass up to the Court, with the Court
17 leave.

18 THE COURT: Thank you.

19 Is it agreeable if the stipulation is marked in
20 evidence as Court's exhibit or plaintiff's exhibit?

21 MR. LEVAL: Yes, your Honor, we would request it
22 be marked in evidence.

23 (Petitioner's Exhibit 1 received in evidence.)

24 MR. LEVAL: Petitioner now calls Dr. Milford
25 Blackwell, your Honor.

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2 M I L F O R D B L A C K W E L L, called as a witness,
3 having been first duly sworn, testified as follows:

4 MR. LEVAL: Excuse me, your Honor. One other
5 matter that I failed to mention. Seated with me at the
6 end of counsel table is Robert Cowen, who is an associate
7 of my firm. He is not admitted to the Federal Bar. He is
8 admitted to the State Bar and he has come to participate
9 and observe the proceedings, and I ask your Honor's per-
10 mission.

11 THE COURT: Yes. I am delighted to welcome you,
12 Mr. Cowen.

13 MR. COWEN: Thank you. It is a pleasure, your
14 Honor. Thank you.

15 DIRECT EXAMINATION

16 BY MR. LEVAL:

17 Q Would you state your profession, Dr. Blackwell,
18 please.

19 A I am a physician and I specialize in neurology
20 and psychiatry.

21 Q During your experience in medicine have you
22 specialized in the study and treatment of narcotics
23 addiction and associated symptoms?

24 A Yes.

25 Q Will you describe for the Court your credentials

1 pt Blackwell-direct 9

2 and your experience which constitute and support your
3 expertise in these areas.

4 A Yes. Well, I am a graduate of Mahari Medical
5 College in 1948; internship at Harlem Hospital, New York;
6 residency training in psychiatry and neurology at the
7 Veterans Administration Hospital, Tuskegee, Alabama;
8 the Cushing Veterans Administration Hospital in Framingham,
9 Massachusetts; the Veterans Administration Hospital in
10 Newington, Connecticut; Indiana University Medical Center,
11 and trainee in neurology at the National Hospital, Queens
12 Square, London, England.

13 Experience: United States Air Force, the
14 New York Veterans Administration Regional Office, the
15 Morningside Mental Hygiene Clinic, Riverside Hospital
16 for Teen-Age Drug Addicts on North Brother Island from
17 October 14, 1958 to March 3rd, 1963; experience at the
18 Health Insurance Plan of Greater New York at several HIP
19 groups, Epileptic Foundation, National and County Chapter,
20 the Callagy Hall for Homeless Girls, 6 to 16, the New
21 York Foundling Hospital, consultant to them; consultant
22 to the Society of Seamen's Children, and so forth.

23 I am a member of the American Academy of
24 Neurology, a member of the American Psychiatric Association
25 on the staff at various hospitals, Bellevue Hospital,

1 pt Blackwell-direct 10
2 Harlem Hospital, Sydenham Hospital, Brooklyn Cumberland
3 Medical Center, Queens Hospital Center, Knickerbocker
4 Hospital, Gracie Square Hospital, and Kew Gardens
5 Hospital; a member of the New York County Medical Society,
6 New York State Medical Society, American Medical
7 Association, American Epilepsy Society, American Medical
8 Electroencephalographic Association, and so forth.

9 Qualified psychiatric New York State Department
10 of Mental Hygiene as of 6/13/58; Workmen's Compensation
11 Board, rating SI, Diplomate of the American Board of
12 Psychiatry and Neurology, certified in psychiatry,
13 certified in neurology and certified in neurology with
14 special competence in child neurology.

15 Q How many years experience have you had
16 specializing in drug addiction and related fields?

17 A Approximately ten years.

18 MR. LEVAL: Your Honor, I offer Dr. Blackwell
19 as an expert witness.

20 THE COURT: He is accepted and you may question
21 him as such unless Mr. Hammer has some objection and wishes
22 to cross-examine.

23 MR. HAMMER: I have no objections to the
24 doctor's qualifications, your Honor.

25 THE COURT: Then you may proceed.

1 pt Blackwell-direct 11

2 BY MR. LAVEL:

3 Q Dr. Blackwell, following your appointment by the
4 Court in this case, did you conduct an examination of
5 Americo Lluveras, the petitioner?

6 A Yes.

7 Q Would you describe the nature of the examination
8 which you conducted?

9 A Well, the examination was on July 17, 1973,
10 and during this examination I took a history, a detailed
11 history, and I did a mental status examination as of now;
12 I did a physical examination to the extent of observing
13 his arms to find evidence of prior drug use, and I came to
14 certain conclusions.

15 Q You are aware, Doctor, that on the night of May
16 5th, 1960, during a period of interrogation, Mr. Lluveras
17 made some confessions which related to a robbery for which
18 he was subsequently convicted?

19 A Yes.

20 Q On the basis of your examination and on the
21 basis of your medical knowledge, are you able to form an
22 opinion to a reasonable degree of certainty as to whether
23 during that night of May 5th, 1960, Americo Lluveras was
24 suffering from pains of the nature of drug withdrawal pains?

25 A Yes.

1 pt

Blackwell-direct

12

2 Q What is your opinion on that subject?

3 A My opinion is that at that time, from the
4 history that I received, I concluded that Mr. Lluveras was
5 suffering from withdrawal pains and discomfort.6 Q Would you describe, as accurately as you can, to
7 the Court the nature of the pain and feelings which, in your
8 expert opinion, Lluveras would have been experiencing during
9 that night.10 A Yes. He experienced nervousness, a "feeling
11 edgy," his nose began to run, nasal discharge, his eyes
12 watered and he had painful abdominal cramps, he had
13 nausea and vomiting, inability to eat or drink food, and
14 he claimed that these pains lasted until the morning of
15 May 7, 1960, but that the residual symptoms of not feeling
16 normal, and nausea, nausea but no vomiting, lasted for
17 approximately 40 days.18 Q Would his feelings also have included pains of
19 diarrhea during the night of May 5th?20 A Diarrhea would be consistent with withdrawal
21 symptoms.

22 Q I would like to ask you a further question.

23 Based on your examination of this patient and based on
24 your knowledge of history, are you able to form an opinion
25 with a reasonable degree of certainty as to whether a

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Blackwell-Direct

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2 confession given by him during a night-long interrogation
3 by the police on that night of May 5th, 1960, would have
4 been given freely and voluntarily of his own free will?

5 A Yes, I have formulated an opinion.

6 Q What is your opinion, sir?

7 A My opinion is that because of the combined
8 element of fatigue over prolonged interrogation, plus the
9 withdrawal symptoms as described by me, that in the con-
10 fession obtained under these circumstances would not be
11 voluntary.

12 Q Going back to the opinions that you have
13 expressed on both of the questions I have just asked,
14 would you describe to the Court as fully as possible what
15 your basis is for those opinions.

16 A Yes. As I said, the element of fatigue over
17 prolonged interrogation, plus the pain and discomfort as I
18 described, nervousness, edgy feeling, nausea, vomiting
19 and so forth, plus that a person would be apt to say what
20 is expected, to placate, in order to get some type of
21 medication to relieve the symptoms or to get away from the
22 interrogation, at least, if they could get away from
23 that, they would be a bit more comfortable then than when
24 subjected to this interrogation.

25 Q Do the opinions that you have described depend

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Blackwell-direct

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2 on your observation of this particular individual and your
3 knowledge of the particular circumstances of his own
4 narcotics habit, as you learned?

5 A Yes.

6 Q Are they affected by the circumstances that he
7 had not had a narcotics fix since around noon of the day in
8 question?

9 A No. That leads me to conclude that the with-
10 drawal symptoms could have started at that point because,
11 of course, in order to have withdrawal symptoms one must
12 slack up from taking drugs or cease taking drugs, the
13 habituating drug, and in this case that was long enough of
14 a period.

15 Q You began your answer with the word "No", and
16 I'm not sure that I understood and the Court understood
17 the effect of your answer. In your opinion, given
18 circumstances, given the hypothetical circumstances that
19 his last drug fix of heroin had been between 11 o'clock
20 and noon on the day in question, when, in your opinion,
21 would the withdrawal pains have started, and would you
22 describe also the progress they would have taken with
23 reference to the hours of the day?

24 A Yes. If the last fix was taken at approximately
25 11 o'clock or 12 noon, surely by six or seven hours later,

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Blackwell-direct

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one could begin to feel withdrawal symptoms. The course is that they would start as light symptoms and become progressively worse as the time passes.

5

MR. LEVAL: I have no further questions.

6

THE COURT: Doctor, you may have said it, but if you did it escaped me. Have you assumed that the fix consisted of a particular drug and a particular quantity?

9

THE WITNESS: Oh, I'm sorry. Yes, I assumed that the fix consisted of heroin, and that it was taken intravenously, as they say, mainlined with heroin taken intravenously, and the habit was about \$30-a-day habit, up to a \$30-a-day habit, and at that particular time that cost would have given a high enough concentration of heroin to be effective in causing addiction and effective in leaving withdrawal symptoms.

17

MR. LEVAL: In view of your Honor's questions, may I ask a few more questions?

19

THE COURT: Yes.

20

BY MR. LEVAL:

21

Q Did you establish something about the defendant's history of addiction or your examination?

23

A Yes.

24

Q Would you state when his history of drug taking began in his life.

1 pt

Blackwell-direct-cross

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2 A His drug taking began approximately at age 13.

3 Q I guess you stated a moment ago what the size
4 of his habit was. Would you state it again, what the drug
5 consisted of.6 A It consisted of heroin, and up to the amount of
7 approximately \$30 a day, which would be four or five bags
8 of heroin a day.9 Q Had this been taken through a good part of his
10 like intravenously?

11 A Yes.

12 Q All those factors which entered into his personal
13 drug history affect the conclusions that you described
14 earlier in your testimony?

15 A Yes.

16 MR. LEVAL: Thank you.

17 THE COURT: You may proceed, Mr. Hammer.

18 CROSS-EXAMINATION

19 BY MR. HAMMER:

20 Q Good morning, Dr. Blackwell. My name is Robert
21 Hammer, and I am Assistant State Attorney General and I am
22 representing the other side in this case.

23 A How do you do.

24 Q Tell me, Doctor, you conducted an examination,
25 a physical examination, of the petitioner and took a case

1 pt

Blackwell-cross

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2 history and a mental examination. Did you have occasion
3 to examine petitioner's prior medical records?

4 MR. LEVAL: Your Honor, I would like to make a
5 statement at this point.

6 THE COURT: Yes.

7 MR. LEVAL: The prior medical history of the
8 petitioner all seems to have been lost a long time ago.
9 We made an attempt and asked Mr. Hammer's cooperation in
10 attempting to locate medical records from the years 1950,
11 '55, and before, and none of them have been located by
12 either Mr. Hammer or myself.

13 MR. HAMMER: I should point out, your Honor,
14 that most of the medical records, if not all of the medical
15 records in question, were not State records. Some involved
16 private or voluntary hospitals.

17 MR. LEVAL: I am not blaming Mr. Hammer for
18 their disappearance.

19 THE COURT: In any event, I assume if the
20 doctor can state about the medical records, he can only
21 state about those that may have been available to him or
22 whatever medical history may have been provided by
23 Liuveras himself.

24 A The answer of course is that I saw no medical
25 records.

1 pt

Blackwell-cross

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2 Q You stated the petitioner's feelings of illness,
3 ill feelings continued -- did you say for 14 or 40 days
4 after the acute withdrawal symptoms ended?

5 A 40 days.

6 Q Doctor, in your experience will the degree of a
7 drug user's addiction or tolerance depend in any way upon
8 the purity of the drug that he is taking?

9 A Yes.

10 Q Do you know, Doctor, how the pharmacological
11 purity of heroin that Mr. Lluveras was using at the time
12 of his arrest was?

13 A No, I do not.

14 Q I take it you would agree that if Mr. Lluveras
15 was using a heroin of low purity, if he were to be with-
16 drawn from it, his withdrawn symptoms would be less intense
17 than if the drug were purer in its pharmacological content?

18 A That's correct.

19 Q But we don't know, do we exactly, how good the
20 drug was at the time?

21 A No. We only know from a history that I took from
22 Mr. Lluveras.

23 Q This would, of course, depend, the purity of the
24 drug, would it have any relation to the price of a daily
25 habit?

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Blackwell-cross

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2 A Yes, it would. If the drug is fairly pure, of
3 course, the price per bag -- that's the little paper con-
4 tainer it's in -- would of course be much higher than if
5 the drug is diluted. If it was diluted, it would be
6 cheaper.

7 Q Do you know whether a person who was using four
8 or five bags a day, what you describe as a \$30-a-day habit,
9 was consuming drugs of relatively high or relatively low
10 purity?

11 A Well, if he is paying \$30 a day, up to that
12 amount, let's say for five bags, then that would suggest
13 relatively pure type drug, because that's fairly expensive
14 per bag. We have \$2 bags, \$3 bags, \$5 bags and \$6
15 bags. Of course, if the habit is -- for a \$2 bag, it
16 isn't as pure as for a \$5 or \$6 bag.

17 Q In your opinion, Doctor, do drug peddlers always
18 deliver the quality of drugs that they purport to deliver?

19 A Well, if it's the local peddler and he wants to
20 stay in business, he's got to deliver. Otherwise, he won't
21 have any customers. And, that's the law of the street.
22 If it's somebody that you find around who is here or
23 there and disappears, of course that's another story.

24 Q Do you know the type of sources that Mr. Lluveras
25 was drawing upon at the time?

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Blackwell-cross

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2 A That I do not know.

3 Q I take it though you relied basically upon Mr.
4 Llewellyn's own case history, the one that he himself provided
5 you, as the basis for your answers to Mr. Leval?

6 A Yes, that's correct.

7 Q In your experience, Doctor, do drug users
8 always tell the truth of their habits?9 Q Well, ordinarily they do, if they're coming to a
10 doctor and there is nothing to gain or lose by not telling
11 the truth. Then they will tell the truth. But, there are
12 circumstances of course that will prevent truthfulness,
13 but that, you know, I don't know. Ordinarily when somebody
14 comes to me and gives me a history, then I get the truthful
15 history because there is nothing to gain or lose by not
16 telling me the truth.17 Q Even if the case history is being taken for pur-
18 poses of litigation?

19 MR. LEVAL: Your Honor, I object.

20 THE COURT: Sustained. I think that's argumenta-
21 tive.22 MR. HAMMER: If the Court please, at this time I
23 would like to move to strike the doctor's testimony on the
24 ground that it is basically incompetent to give the
25 physical condition of petitioner at the particular time.

1 pt

Blackwell-cross

21

2 There has been, I would submit, no basis given for the
3 hypothetical and on top of which I would invite the Court's
4 attention to a case of United States ex rel Marvin Kaye
5 v. John L. Zelker, 355 Fed. Supp. 1002. It was affirmed
6 without opinion by the Court of Appeals for this Circuit,
7 at 474 F.2d. 1336, and certiorari was denied 414 U.S.
8 845. This was a case where a psychiatrist was
9 appointed by the Court to examine a petitioner who claimed
10 he was insane at the time of his trial, legally insane,
11 and the doctor had the benefit of full medical records,
12 and he relied upon those records plus an examination of the
13 petitioner shortly before the hearing. And, at this
14 point the Judge, Judge Tenney, noted in his opinion the
15 fact that the doctor had not been there at the time of the
16 alleged occurrence and that he was, despite the presence
17 of all of those records, merely second-guessing. Unfortunately,
18 we are in this situation, but we have -- I would have
19 to characterize it as even worse than the Kaye case, since
20 at least there were medical records of the petitioner's
21 condition. The doctor, the expert witness, was in
22 effect second-guessing those records. Here we have simply
23 what amounts to speculation, indeed by a distinguished
24 physician, yet it still remains a speculation as to the
25 actual physical condition of this petitioner and

1 pt

Blackwell-cross-redirect

22

2 regrettably I must submit that this is incompetent testi-
3 mony.

4 THE COURT: With respect to the first part of
5 your objection, I assume that Mr. Leval has offered this
6 testimony subject to connection with the testimony of the
7 petitioner.

8 MR. LEVAL: Of course, your Honor.

9 THE COURT: And I expect and assume the
10 petitioner in his testimony will support the factual
11 premises assumed by the doctor in his testimony.

12 With respect to the second part of your objec-
13 tion, based upon the decision in the Zelker case, I would
14 have to look at the case to see what, if any, application
15 it deserves in this case. I think it would be premature
16 for me to judge its applicability now in advance of hearing
17 all of the proof.

18 MR. HAMMER: Thank you, your Honor.

19 I have no further questions.

20 MR. LEVAL: I would just like to ask one or two.

21 REDIRECT EXAMINATION

22 BY MR. LEVAL:

23 Q Do you recall, Doctor, examining the arms of
24 the petitioner, seeing visible tracks that corroborated a
25 long history of insertion of needles in his veins?

1 A Yes.

2 MR. LEVAL: That's all.

3 THE COUNT: Thank you, Doctor.

4 (Witness excused.)

x 5

6 MR. LEVAL: Your Honor, the petitioner calls
7 Dean Rafael Ferrer.

8 R A F A E L F E R R E R, called as a witness, having
9 been first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. LEVAL:

12 Q What is your position, sir?

13 A My position at present is Associate Dean of
14 Students at Hunter College. That refers to the total body
15 of students at the school.

16 Q Are there other posts that you hold in community
17 affairs?

18 A I am on the board of an alternative high school
19 in East Harlem, board of a junior chamber of commerce in
20 East Harlem; I am a member of the Manpower Committee in
21 East Harlem, and I have been a resident of East Harlem for
22 many years.

23 Q Would it be a fair statement, sir, that throughout
24 your life or at least the last 20 years of it, that you have
25 been an active member and a knowledgeable member of the Harlem

1 pt

Ferrer-direct

24

2 community?

3 A It would be, correct.

4 Q And you have been familiar with people in that
5 area?

6 A I have.

7 Q Would you describe some of the roles in which
8 you have been familiar with, young men particularly,
9 in the Harlem area.10 A Well, I will begin with the fact that I grew up
11 in the Harlem area. In 1953 I was employed by the Boys
12 Club of New York, where I worked as a counselor and later
13 as a program director for a period of approximately nine
14 years, in which I came in contact with young men, of
15 course younger than myself. At the time I was 20 years
16 old. I started very young in the field. Later on I was
17 employed by the New York City Youth Board which at the time
18 was dealing with gangs in the street, fighting gangs as we
19 called them then, and I was assigned to work with some of
20 the gangs and later was supervisor of those gangs and more
21 recently I was supervisor of the workers of the gangs.22 Recently I was executive director of the James
23 Johnson Community Center, a multiservice center with a
24 budget of two and a half million dollars, which I was
25 responsible for, for a period of two and a half years, and

1 pt

Ferrer-direct

25

2 presently I'm Associate Dean of the college.

3 Q From your experience in Harlem, have you known
4 during your life the petitioner, Americo Lluveras?

5 A I certainly have, yes.

6 Q How long have you known him?

7 A I would say I have known Americo since he was
8 eight, nine.9 Q And during this period have you also known
10 other members of the community who were familiar with
11 Americo Lluveras?

12 A I certainly have.

13 Q Directing your attention back some 15 years and
14 more, to the late 1950s, do you recall at that time what
15 was the reputation of Americo Lluveras in this community for
16 truth and veracity and dependability? I am not talking
17 about now. I am talking about 1957, '58 and '59.18 A That would be on a continuum. Americo was known
19 originally as a young fellow, as quiet and self-contained
20 and rather a nice guy. As he got more and more involved
21 in street activities, I think 1951, '52, was the height of
22 the use of drugs and gang fighting in Harlem, and I think
23 he became deeply involved and at that point there was a
24 change in character and personality to a more negative kind,
25 from positive to negative.

2 Q I am talking about after the change, the
3 negative, after he became involved in drugs and the kind of
4 street activities, what was his reputation then.

5 A At that point he was like most other guys who
6 were involved in the street, involved in using drugs, not
7 to be trusted, pretty shaky, I would say, using the street
8 vernacular. Not to be trusted.

9 Q During the last three or four years have you
10 been familiar with coming into contact with people who have
11 known, worked with, associated with and been in
12 contact with Americo Lluveras?

13 A I have.

14 Q What has been his reputation during the last three
15 or four years and what is his reputation now among the
16 community of people who know him for truth and veracity?

17 MR. HAIMER: If the Court please, I would like
18 to object to any character testimony other than relating
19 to petitioner's reputation for truthfulness and dependa-
20 bility at the time of his arrest. I submit that it is irrele-
21 vant to the question of whether he voluntarily made a con-
22 fession to the police on May 5th, 1960.

23 THE COURT: I will take it, and I think the only
24 ground upon which I can take it is that Lluveras is going
25 to place his credibility in issue in this case. Where that

1 || 100

2 is done, since this is really collateral to a criminal
3 proceeding, I think character evidence would be appropriate
4 but it's not because it could possibly have any bearing on
5 the events which are principally involved in this hearing.

6 In any event, I will give you a continuing objection, and
7 you may renew your motion to strike at the conclusion of
8 the case. I would prefer to take it and deal with it at
9 the conclusion of the evidence.

10 MR. HAMMER: Very well, your Honor. I assume
11 this applies to any other similar character testimony?

12 THE COUNSEL: It will, and I will assume that you
13 will make the same motion and the same reservation; rights
14 to move to strike are reserved.

15 MR. HAMMER: Thank you very much, sir.

16 MR. LEVAL: I could like to add, your Honor, it
17 is being offered, as your Honor said, with respect to his
18 veracity and dependability; now, as of the date that he will
19 be testifying before your Honor.

20 THE COURT: Very well.

21 BY MR. LIVELI.

22 Q Do you recall the question that I had put to
23 you?

24 A Yes. Did I have contact with other people,
25 associates of Americo's in the neighborhood.

1 pt

Ferrer-direct

28

2 Q Then I had asked you, Deer Ferrer, what is
3 Americo Lliveras' reputation now, during the last couple of
4 years, for truth and veracity among his community, the
5 people he knows and works with.

6 A My experience in the last two years is in two
7 forms. On the one hand, I am familiar with most of
8 Americo's associates, inasmuch as they were young people
9 who grew up in the same neighborhood and I had contact
10 with them in my various roles as a community leader,
11 professional and resident. I see them occasionally as they
12 make the route to similar institutions. Several have been
13 to Dannemora and Green Haven and they're back home and I
14 see them and I ask them about people who we know mutually,
15 what they're doing. Many of the people who come back and
16 have said to me how changed a person Americo has become,
17 how much more intense he was with himself and with growth,
18 how much more intense he was with his self-need to grow
19 and to learn and how much more he seems to understand him-
20 self and also the fact that he had been helpful to some of
21 the other people in institutions who would not, I should
22 say, be as capable of staying in touch with current things,
23 literature, writing, growing intellectually as well as
24 emotionally.

25 Q My question is directed particularly to his

1 pt

2 Ferrer-direct

29

3 reputation for truthfulness and veracity, whether among the
4 people who know him he is considered a person who is truth-
5 ful and dependable or not. Could you elaborate on that
aspect?

6 A Certainly over the last three or four years
7 absolutely, he is a person who is seen as highly truth-
8 ful, straightforward and direct.

9 MR. LEVAL: No further questions of this
10 witness, your Honor.

11 MR. HAMMER: No questions, your Honor.

12 THE COURT: Thank you.

13 (Witness excused.)

14 MR. LEVAL: The petitioner calls Professor
15 Joseph Norton, your Honor.

16 J O S E P H N O R T O N, called as a witness, having
17 been first duly sworn, testified as follows:
18 DIRECT EXAMINATION BY MR. LEVAL:

19 Q What is your position, sir?

20 A I am employed at Maris College as assistant
21 professor of history, general faculty, and housemaster of
22 the dormitories at the college.

23 Q Professor Norton, would you please keep your
24 voice up and speak in the direction of the Court so you can
25 be heard easily. Thank you very much.

1 pt

Horton-direct

30

2 As a professor at Maris College do you know
3 Americo Bluyeras?

4 A Yes.

5 Q Is he a student in Maris College?

6 A Yes, he is.

7 Q How long has he been there?

8 A Approximately two and a half years now.

9 Q During that period have you been familiar with
10 him?

11 A Yes, I have.

12 Q During that period have you been familiar with
13 others at the college who know him and work with him and
14 see him on a daily basis?

15 A Yes, I have. When he came approximately two
16 and a half years ago, he moved Leo Hall of which I
17 am in charge, and for the first six months I had dealt with
18 him more in an attempt to get him to move from the Green
19 Haven world into a college dormitory world, which he was
20 finding a little different.

21 At the end of the first year there, I offered
22 him a contract which was subsequently reaffirmed by the
23 deans who interviewed him to become a resident coordinator
24 which is basically a student who is in charge of approxi-
25 mately 300 students in the role of counseling, advising and

1

pt

Norton-direct

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2

things of that order, as well as building security and things like that.

4

In the second year, he also took me for two courses in American history, and I had him in both roles, and subsequently in the role of the dorm I have worked with him, evaluated him and been involved with him at a higher level administration evaluation, involving his job which he is still holding, for approximately a year and a half.

11

Q At Maris College is Americo Lluveras known as another student might be known by the front office, so to speak, the administration of the college?

14

A He is probably one of the most well-known people in Maris College because of, let's say, many of the roles he's been in. From an academic point of view, many of the colleagues in my department of which Americo is a political science major have known him because of his activities with the political science club and academically.

20

With regard to main line administration he has been well known because of his job role in the dormitories in which he has personally saved us maybe seven or eight major difficulties because of his expertise, his ability to deal with people, and in minor level administration he has been well known because of some of the programs he has been

1 pt

Morton-direct

32

2 involved with, like the Honduran program, the tutorial
3 services, so much so that approximately two weeks ago the
4 director of our security program needed someone to super-
5 vise the campus at Christmas when most of the people are
6 gone for a month and they wanted to offer it to him, which
7 gives him the master keys to the campus and I would say
8 nobody has found any problems with Americo.

9 Q You are getting ahead of us. Are you familiar
10 with the reputation which Americo Lluveras holds in the
11 community of Maris College for truth and veracity and
12 dependability?

13 A Yes, I would say I am.

14 Q Would you describe that reputation as fully as
15 you can.

16 A Well, it's a multiple reputation which comes
17 from, let's say, my expertise of experience with these
18 people. The general student body has tremendous regard
19 and trust in him. The general administration has
20 tremendous regard and general trust in Americo, and has
21 been supported by him right through.

22 A certain element of the student population
23 does not like him, does not want to relate with him and
24 those are some of the ex offenders that Americo has found
25 in several days, let's say, being involved in general

1 pt

Norton-direct

33

2 hustles on campus and has been one of the few people who
3 has been willing to bring it to the proper attention, be
4 it security, resident administration or even the president
5 in one case.

6 I would have to say generally speaking the overall
7 student body, overall faculty, overall people that I work
8 right under, involved in student affairs have tremendous
9 belief in Americo's veracity. In the year and a half he
10 has worked for me, I have never found occasion to doubt
11 him and he has gone out of my area to higher level of the
12 administration, and everything he has come to us with or
13 anything he has been asked has always been truthful.
14 Even cases where he has brought in certain things to us
15 where people just said it was an impossibility to believe
16 that, and subsequently three or four months later everything
17 he said was going to happen did come up before us and we
18 had to deal with it.

19 MR. LEVAL: I have no further questions, your
20 Honor.

21 MR. FALKER: I have no questions, your Honor.

22 THE COURT: Very well. Thank you.

23 (Witness excused.)

24 MR. LEVAL: Petitioner at this time calls
25 Americo Liuzzo, your Honor.

1 pt

2 AMERICO L LUVERAS, the petitioner herein,
3 called as a witness, having been first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LEVAN:

7 Q Mr. Lluveras, you are the petitioner in this
8 case, is that correct?

9 A Yes, I am.

10 Q Directing your attention to March of the year
11 1961, were you convicted of robbery?

12 A Yes, I was.

13 Q And you received a sentence?

14 A Of 10 to 30 years.

15 Q That was in the New York State Supreme Court, is
16 that right?

17 A Yes, sir.

18 Q How many years did you serve in jail?

19 A I served approximately 12 years.

20 Q Are you now out on parole?

21 A Yes, I am.

22 Q Where are you now residing?

23 A Maris College, Poughkeepsie, New York.

24 Q Are you a student there?

25 A Yes, I am.

1 pt

Lluyveras-direct

35

2 Q Where were you born?

3 A I was born in Spanish Harlem, New York City,
4 Manhattan.

5 Q Did you grow up in that neighborhood?

6 A Yes, I did.

7 Q Did there come a time in your life when you
8 were sent to reform school?

9 A Yes, sir.

10 Q Where was that?

11 A I was sent to Lincoln Hall, Lincolndale,
12 New York, at the age of 13, 14.13 Q Did there come a time while you were at Lincoln
14 Hall at the age of 13, when you had an experience involving
15 the use of drugs?

16 A Yes, I did.

17 Q Would you describe that to the Court, please.

18 A Well, it was in the proximity of going to the
19 gym with about six or seven other fellows from Lincoln Hall
20 and we went to the bathroom and there is where I first was
21 encountered with drugs. I say encountered, because at no
22 time prior to that had I ever used drugs. Although I was
23 scared, I took my first mainline shot there to be accepted
24 by the crowd.

25 Q During the remainder of your stay at Lincoln

1 pt

Lluveras-direct

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2 Hall, did you have further occasion on which you used drugs?

3 A Yes, I did.

4 Q Would you describe the progress of that history.

5 A On occasion, some of the fellows there would
6 go home for visits such as holidays and loyalty days and
7 they would bring back heroin and pot and whatnot and we
8 would snort or sometimes we would just go to the gym bath-
9 room and take a shot of heroin.10 Q Going back to the first incident that you de-
11 scribed in the bathroom, did that involve the use of heroin?

12 A Yes, it did.

13 Q How did you take the heroin on that occasion?

14 A Mainline, intravenous.

15 Q Mainline shot?

16 A Yes.

17 Q You were 13?

18 A Yes, about.

19 THE COURT: Did you have hypodermic needles?

20 THE WITNESS The needles were hypodermic needles
21 from the hospital. In respect to the other part, that is
22 used with the needle, they had an eyedropper and they
23 would use some sort of -- in other words, insert it into
24 the needle so none of the liquid formed would come out.

25 Q I think the Court was asking you how you

1 pt

Bluveras-direct

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2 happened to have hypodermic needles available to you.

3 A It was brought from the City.

4 Q By the boys who brought the drugs?

5 A Right.

6 Q With what frequency did you take drugs during
7 your remainder of your stay at Lincoln Hall?8 A In holidays, whenever somebody would bring some
9 up. It wasn't a continuous thing at the time.10 Q At what age did you leave Lincoln Hall to return
11 to your home?

12 A I was about 15, 16 years old.

13 Q Did you return to the Spanish Harlem area at
14 that time?

15 A Yes, I did.

16 Q Would you describe what experience you began to
17 have with drugs after you returned home.18 A Several months afterwards, after I was home,
19 it was a matter of getting familiar with people that were
20 in that field, living that sort of life. Once I got a
21 little familiar, occasionally I would buy a bag and snort
22 it with someone. I was doing this one weekend and after
23 awhile it became a habit. It was a thing that it became
24 four times a week and then I was addicted to the usage of
25 narcotics.

1 pt

Lluveras-direct

38

2 Q Did there come a time back then when you began
3 to use narcotics on a daily basis?

4 A Yes. I was starting snorting very heavily and
5 it was costing a lot of money, trying to obtain money to buy
6 it. It reached a point that I was informed by using
7 the needle that it would not have to be so large a shot
8 and I would save myself some money. So, I did this. So,
9 I went from snorting directly back to shooting it into the
10 veins, and I found it so, that I didn't have to use so much
11 drugs in order to get high. But, eventually this became a
12 big habit.

13 Q Within, say, a year after you left Lincoln
14 Hall Reform School, would you describe at this point how
15 much you were using in the way of drugs; heroin, and how.

16 A I would always chip in with someone else and
17 it would be a total of maybe \$15 a month, and \$15 somebody
18 else would buy, and sometimes \$20. Whenever drugs were made
19 available to me I would use it so I didn't have no given
20 time. I'll say maybe \$20, \$25, \$30 worth of drugs. It
21 depended.

22 Q Within a year after you left Lincoln Hall were
23 you using heroin on a daily basis?

24 A Yes, I was.

25 Q About how much at that time on a daily basis,

1 pt

Lluveras-direct

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2 if you recall?

3 A 50, \$35, \$40. It was always a matter of getting--
4 chipping in with someone else.

5 Q Was that being taken intravenously, mainline?

6 A Mainline, yes.

7 Q How many shots a day as an average, as a habit
8 did that represent when you were 15 years old?

9 A Three, four.

10 Q How long did you continue at that time to take
11 drugs at that level?12 A Until my arrest in 1956, I think it was February
13 1956.

14 Q What were you arrested for in February of 1956?

15 A I was arrested with ten quarters, 2-1/2 ounces
16 of drugs.17 Q I frequently have been asking you about drugs
18 rather than the specific drug. Is it correct, Mr. Lluveras,
19 that your experience with drugs has been with heroin?20 A Yes, that's what it was at all times. It was
21 heroin.22 Q And you have been using heroin since, that is,
23 until you stopped, since your introduction to them that you
24 described in Lincoln Hill?

25 A Yes, to '56 at first time.

1 196

Lluvias-direct

40

4 A I was arrested. I came out on bail the follow-
5 ing day. And, two days later, I approached the Court and I
6 asked would they have me committed to an institution where
7 I could get a cure, because at the time they had taken all
8 the drugs I had and it was a matter of me either going out
9 there to rob, whatever, in order to support my habit and
10 since I didn't have money, I wanted the Court to help me
11 at the time.

12 Q Were you sent to a hospital?

13 A. They told me to come the following day. The
14 district attorney and the judge got together and they
15 decided for me to come the following day with my parents
16 and they committed me to the Tombs where I stayed for
17 approximately seven to ten days until they were able to get
18 contact with Brother Island Hospital.

20 A After ten days, yes, directly there. They
21 released me again on bail and I went to Mott Street, 100
22 Mott Street, and from there they took me straight to North
23 Brothers Island.

24 Q During the period of your confinement in 1966,
25 when you were arrested and put into either a jail or

1 PG

Lluveras-direct

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2 hospital, did you at that time experience painful symptoms
3 or withdrawal of the drug?

4 A The ten days I was there, the first time I had
5 ever encountered the changes. I had never went through
6 that type of treatment before, you know, self-treatment.
7 That is like, you know, abuse to myself. Withdrawals that
8 caused pains, cramps in the stomach, throwing up and things
9 of that nature, and I couldn't sleep at all, and I kept
10 screaming because of the pains in my stomach.

11 Q When were you released from your confinement
12 at North Brothers Hospital?

13 A I stayed there approximately five months. So,
14 this was from March until the latter part of August.

15 Q Of what year?

16 A '56.

17 Q After you were released, did you use drugs?

18 A A month or so after, I started in very lightly,
19 until I got arrested -- Judge Schweitzer put me on pro-
20 bation for three years in September of 1956, and I was back
21 out on the street and while on probation I got arrested, in
22 November, 1956, for hanging out with known criminals, and
23 also one of the individuals I was with had burglarized a
24 place and had some clothing, so I was arrested and my
25 probation was revoked.

8x

1 pt

Liuveras-direct

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2 Q In between the time you were released from
3 North Brother Island and the time you were arrested subse-
4 quently, had you used drugs again during the intervening
5 period?

6 A Would you repeat that.

7 Q In between the time you were released from
8 North Brother Island and put back on the street and the
9 time you were rearrested and parole was revoked, did you
10 use drugs again?

11 A Yes, I did.

12 Q Heroin?

13 A Yes, sir.

14 Q You stated after your parole was revoked, you
15 were imprisoned for nearly three years; is that correct?

16 A Yes.

17 Q Did that period come to an end in June of 1959?

18 A Yes, it did.

19 Q Did you return to the streets at that time?

20 A I did.

21 Q After you returned to the streets did you begin
22 to use heroin once again?

23 A Yes, I did.

24 Q Would you describe how soon you began to use it
25 and in what quantities.

1 pt

Lluveras-direct

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2 A It was about two and a half months later or so,
3 I believe, or three; I'm not quite sure as to the time, but
4 I did start snorting on weekends, and it was very shortly
5 that I started going back to mainlining, because that's what
6 I enjoyed doing at the time. And, in November, November
7 4th of 1959 I violated my parole because of marks in my
8 hands, by the parole officer.

9 Q At the time that you violated in November of
10 1959, with what intensity and frequency were you using drugs?

11 A Very lightly. It wasn't heavy at all because
12 when I was violated I just had a chippy. In other words, I
13 had become addicted to an extent where I would have to use
14 it or if I didn't use it I would get the pains that I got
15 prior to that.

16 Q How long did you remain in jail after you were
17 violated?

18 A A month.

19 Q You were released in December of 1959?

20 A Yes, I was.

21 Q Did you begin using drugs following your release?

22 A Yes. In fact, the same day I went back to
23 the neighborhood and started using more drugs.

24 Q During the time you were in jail between
25 November and December of 1959, is it correct that your mother

1 PT Lluveras-direct 44

2 had moved her residence from uptown to the downtown Lower
3 East Side area?

4 A Yes, from Spanish Harlem, Manhattan, to down-
5 town, down to between Houston and --142 Park Place.

6 Q Was it Baruch Place?

7 A Yes, Baruch Place.

8 Q Would you describe what you did in connection
9 with the use of drugs on the day of your release on
10 December 4th, 1959?

11 A Okay. Upon being released, I walked home
12 although I was offered money by my parole officer. I
13 walked home, changed my clothes, got money from my mother
14 and went directly back uptown.

15 Q What did you do when you went uptown?

16 A I bought some drugs right away.

17 Q Did you take drugs?

18 A Yes.

19 Q Was that heroin?

20 A Yes.

21 Q How did you take it?

22 A Mainline.

23 Q Did you continue after that to take drugs?

24 A Yes, I did.

25 Q Was it heroin?

1 || pg

Lluveras-direct

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2 A Yes, it was.

3 Q Did you take it by scoline injections?

4 A Yes, all the time.

5 Q Would you describe the kind of habit that you
6 redeveloped in the beginning of December, 1959.

7 A Okay. My habit was starting to accumulate. I
8 was using \$5 bags. I would chip in with people, get \$10
9 bags, and then it started going up to \$20. I was
10 gambling and hustling in the neighborhood, so I had a lot
11 more money, and in the process of having more money, it
12 was a matter of getting high, perhaps with two fellows
13 now or later on with three other people or one other person.
14 But, it was a continuous thing. There was no stopping.
15 All I wanted to do was get high.

16 Q How much heroin were you taking on a daily
17 basis shortly after your release on December 4, 1959?

18 A Maybe one, two, three bags and then it kept
19 accumulating. It got to a point where I may have bought
20 a half an ounce of drugs at times, and just kept it in the
21 house and when I was in need of a fix, all I had to do was
22 go to the bathroom, close the door and take as much as I
23 wanted to. This continued on until I got arrested May 5th.

24 Q You were arrested May 5th, 1960, is that correct?

25 A. *Mass.*

1 || p. 3

Llywdras-direct

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4 A. About \$15.

6 A Right.

8 Around there.

9 Q. And continuing, describe the period between
10 January and the time of your arrest.

11 A In January I was using about two, three bags
12 and it was a matter of greed on my part. It's not that my
13 body was asking for this. It's just that my mind did at
14 the time. And sometimes it would be, in February maybe four
15 bags, five bags, chipping in with somebody else and I
16 reached a point where I had enough to buy sometimes half an
17 ounce. It's not that I used a whole half ounce, but I
18 would have enough to last me for a week or so, using it in
19 small quantities, so any time I wanted to get high I just
20 kept getting high. I would say on the average a day, \$25,
21 \$30, \$40 it reached.

22 Q Directing your attention to May 4th, 1960, do
23 you recall learning on that day that the police were looking
24 for you?

25

1. P.Y.

Bluveras-direct

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2. Q. What did you do when you learned that the police
3. were looking for you?

4. A. I left the neighborhood and I went home, down-
5. town. When I got home, walking upstairs I heard my mother
6. was being interrogated by someone, and what I did was I
7. went back uptown.

8. Q. What did you do uptown?

9. A. I got high.

10. Q. Took heroin?

11. A. Yes.

12. Q. Did you spend the night at home that night?

13. A. No. I spent the night with some friends.

14. Q. Taking drugs?

15. A. Right.

16. Q. Directing your attention to the next morning,
17. May 5th, 1960, did you have breakfast the next morning?

18. A. No.

19. Q. Where?

20. A. Uptown with my friends.

21. Q. Do you recall what you had for breakfast?

22. A. Not really. Just at that time I was always
23. taking like maybe orange juice, coffee and eggs, you know,
24. orange juice, milk, pineapple-cheese pie, eggs.

25. Q. What was your normal breakfast at that time?

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2 - - -

5 A. About nine, nine-thirty, ten o'clock.

6 9. Keep your voice up, please.

7 A About nine, nine-thirty, ten o'clock. somewhere
8 around there.

9 2 Did you call your mother after breakfast?

10 A Yes, I did and I asked her how she was and
11 whatnot and were the police still looking for me. I wanted
12 to know how they found out where I lived. She told me they
13 were still there. So I told her would she put them on,
14 so I could speak to them.

15 So, upon talking to the officers, I asked them
16 what was I being, you know, what they were looking for me
17 for, and they told me merely questioning and whatnot, and I
18 asked them where was the police station and I would go
19 straight over there. They told me it was on 26th Street,
20 between Old Broadway and Amsterdam.

21 Q 126th Street?

22 A. May, 126th Street, Between Old Broadway and

23 Amsterdam Avenue. So, I told them I would be there.

Instead of going to the police station what I did was, I went back with my friends and I got high again. I walked

1 pt

2 around a couple of blocks, then I went to his house and
3 we got high.

4 Q You took heroin, a heroin injection?

5 A Yes, I did.

6 Q Mainline?

7 A Yes.

8 Q What time was that?

9 A About 11:30, 12 o'clock.

10 Q Around noon of May 5th?

11 A Yes.

12 Q At about 3 o'clock of that day did you go home?

13 A Yes. I had called the officers again around
14 two, I believe it was, and I told them that I was on my way
15 home and I went home.

16 Q When you got home, did you have anything to eat?

17 A Yes. I went home and I did get me a glass of
18 milk, and I think it was a piece of sweet cake or pie, I
19 don't recall which it was, and I changed my clothes and
20 whatnot and then the officers and myself left.

21 Q Did you go in the company of the officers
22 from there to the police station?

23 A Yes, we did.

24 Q About that time did you get to the police
25 station?

1 pt Lluveras-direct 50

2 A Around 4 o'clock.

3 Q You have described a breakfast you had around

4 9.30 or 10 o'clock.

5 A Izen.

6 Q And a glass of milk and a piece of cake which

7 you had at your mother's apartment at about 3 o'clock.

8 Did you have any other food besides those two meals up to

9 the time you went to the police station?

10 A No.

11 Q You have described a heroin injection, mainline,

12 which you took about 11.30, 12 o'clock noon.

13 A Around there.

14 Q Did you have any subsequent heroin before going

15 to the police station?

16 A Only early in the morning, or early that night,

17 you know.

18 Q Was that the last shot you had that day, around

19 noon or shortly before?

20 A Yes, it was. After that I didn't have any more.

21 Q Was that the last heroin injection you had in

22 your life?

23 A In fact, it is.

24 Q Directing your attention once again to the time

25 you arrived at the police station, you say that was about

1 p6

Lluveras-direct

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2 5 o'clock?

3 A I arrived about 4 o'clock, 4.30, around there.

4 Q Would you describe what happened in the next
5 couple of hours.6 A I was told to sit in a waiting room. I sat
7 there until about 6, 6.30 or so, and then I started getting
8 very edgy and so -- in fact, I was there with another
9 friend of mine, a lady friend. And, I decided to tell the
10 officers I would be back, I was going downstairs for
11 awhile. My intentions at the time was to go and get a fix
12 because I was getting very sick and I felt very uncomfort-
13 able. It was then they said don't leave, we'll speak to
14 you in a few minutes.15 I said, "I'll be back because I have to take
16 care of some business and I came here on my own volition."17 They said, "No, we're in the process of
18 speaking to you."

19 Q You were not allowed to leave?

20 A I was not allowed to leave.

21 Q You say it was around 6.30 that you began to
22 feel the effects of the heroin that you had taken that
23 morning wearing off?

24 A Yes, I was starting to feel it very strongly.

25 Q Would you describe the feeling that you

1 pt

2 Lluveras-direct

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3 experienced, the feelings that you experienced as a result
4 of the withdrawal of drugs as the evening progressed?5 A Around 5 o'clock I'll say, I was starting to
6 feel a little edgy, but it was very minute. It was some-
7 thing I could deal with and I didn't think it was going to
8 be long afterwards that I was going to be questioned. And
9 it got to a point around six that I really started yawning
10 and whatever and -

11 MR. HAMMER: Could you repeat the last word?

12 THE WITNESS: Yawning.

13 A (Continuing) It was not so much from hunger as
14 from the need of drugs. I really wasn't concerned about
15 eating. I was more concerned about being straight.16 Around 6:30 I approached the detectives and
17 they told me just wait a little while.18 Q Never mind your conversation with the detectives.
19 What I want you to answer is the feelings that you
20 experienced in your body, in your mind, how you felt as
21 the afternoon and evening and the night progressed, beginning
22 with what you have started to describe.23 A I started yawning, feeling very uncomfortable
24 sitting down, kept moving up and down in the waiting room.
25 Finally, after I spoke to the officer he told me to stop
in the room and I was hoping I could get this over with

1 pt Lluveras-direct 53

2 quickly, and as I was being questioned, I kept getting
3 sicker and sicker.

4 Q When you say sicker and sicker would you describe
5 in greater detail how you felt.

6 A During the night I started getting very nauseous
7 and started getting like cramps and as we went into the
8 night, I started feeling very uncomfortable, I couldn't
9 sit straight. I started getting cold chills, I felt warm
10 one minute and then cold chills and my nose started running.
11 My eyes were running and I told the officers I need a fix.

12 Q How long did the questioning continue?

13 A It continued all through the night until the
14 next morning.

15 Q Were you questioned all night long from time
16 to time by police officers?

17 A Yes. It would go on for an hour or so, they
18 would stop for a few minutes, someone else would come and
19 question me, and all I kept saying at that time was that I
20 was sick, very, very sick, and I was bent over at the time.
21 They told me --

22 Q Never mind your conversations with the police
23 officers. I am concerned of having you describe as fully
24 as possible what you felt. Not the communications.

25 A I felt I couldn't bear it no more with the pains

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2 I was going through. My only concern was to get a fix. I
3 had cramps in my stomach, I threw up, some greenish stuff,
4 and tears were coming out and my nose was running and I was
5 a mess. And, I just needed a fix bad.

6 Q Did there come a time during the questioning
7 when you admitted to the police that you had committed
8 some crimes, one or another crime?

9 A I was shown a list with about 23, I believe it
10 was, about 23 different names of crimes that were supposed
11 to have been committed and I said I had committed them all.
12 All I was concerned with was getting a fix. I felt by
13 telling them I had committed these robberies or mugging
14 jobs, they would then take me someplace so I could get
15 a fix.

16 Q Did they question you about numerous different
17 crimes during the night?

18 A Yes, they did.

19 Q Did you admit to having committed numerous
20 crimes?

21 A I even fessed up to having committed crime
22 that was impossible for me to have done, due to the fact
23 that I was incarcerated in Sing Sing at the time!

24 Q At the time that you began admitting to having
25 committed crimes, would you describe how you were feeling

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Beverage-direct

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2 as of that time when you began to say Yes, I did commit
3 these crimes?

4 A At the time I wasn't so much concerned about
5 staying yes or not. I was concerned with getting a fix. I
6 had pains and I was in need of a fix. My only objective
7 was to get a fix of dope. Whatever I said in respect to
8 the crimes, robberies and whatnot, I wasn't concerned with
9 that I meant. I realized that someone would denote the fact
10 that I was fibbing up to crimes committed prior to my
11 release.

12 Q During the course of the night did you have
13 occasion to have a bowel movement?

14 A Yes.

1CX

15 Q Did you have diarrhea?

16 A Yes.

17 Q Did you vomit?

18 A I did vomit.

19 Q Do you recall that the assistant district
20 attorney arrived at the stationhouse at some time during
21 the night or during the morning?

22 A Yes.

23 Q Was that around six, seven o'clock in the
24 morning?

25 A Five-thirty, six o'clock in the morning.

1 pt

Lluyeras-direct

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2 Q Did the assistant district attorney question
3 you?

4 A Yes, he did. He questioned me in respect to
5 numerous crimes.

6 Q Did the assistant district attorney take a
7 formally transcribed question and answer with a reporter
8 sitting down, taking down your words?

9 A Yes, he did.

10 Q Was that at 3 o'clock in the morning?

11 A That was prior to 3 o'clock. It was earlier
12 than that. It was around 6.30, 7 o'clock or so, I believe.
13 I don't think he was finished until about 8 o'clock.

14 Q Do you have a precise recollection of the
15 time?

16 A No, I don't, really.

17 Q If I tell you that the transcript itself shows
18 that it was taken at 3 o'clock, 8.05, will you accept
19 that as being the correct hours?

20 A Yes, I have to.

21 Q Do you recall how you felt while that
22 transcript was being taken, while you were being questioned
23 by the assistant district attorney?

24 A I felt exhausted, tired. All I wanted to do
25 was to be left alone, and get a fix if possible, period.

1 pt

Lluveras-direct

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2 Q Had you had any sleep whatsoever during the
3 night?

4 A No, sir.

5 Q When was the last time you slept?

6 A It was May 4th, and that was in the early
7 morning, actually May 5th.

8 Q The previous night, is that right?

9 A Right.

10 Q Did you eat any food during the night of ques-
11 titioning in the stationhouse?

12 A No. Since I left my parents' house at 3
13 o'clock, I didn't eat anything since then.

14 Q So that as of the taking of the Q and A, at
15 3 o'clock the next morning, was the previous breakfast
16 and the previous day's glass of milk and piece of cake at
17 3 o'clock, was that the only food you had taken in the last
18 24 hours?

19 A Yes.

20 Q And is it correct that you had no sleep in
21 the 24 hours?

22 A No, sir, no sleep.

23 Q Would you have given the confessions which you
24 gave to the police and the district attorney if you had not
25 been experiencing the feelings of pain which you have been
describing and the feelings of need for drugs?

1 pt

Lluveras-direct

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2 A No, sir. I don't believe if I didn't have a
3 habit or used drugs at the time that I would have given the
4 testimony or statement that is alleged that I gave. Again
5 there is a possibility I would have given it, but I think
6 it would have been under different circumstances.

7 MR. HAMMER: Objected to as conclusory, your
8 Honor.

9 THE COURT: Just the last part is stricken.

10 MR. LEVAL: May I have a second to consult with
11 my colleague?

12 THE COURT: Certainly.

13 Would you object to having a short recess now?

14 MR. LEVAL: No, your Honor.

15 THE COURT: We will have a short recess.

16 (Recess.)

17 (Resumed.)

18 THE COURT: Go ahead, Mr. Leval.

19 BY MR. LEVAL:

20 Q I had been asking you about the questions and
21 answers that were taken of you by the assistant district
22 attorney at about 8 o'clock in the morning. Do you
23 remember how long that interrogation went on?

24 A It was very lengthy. Close to two hours,
25 something like that, hour and a half, two hours.

Bluveras-direct

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1 pt
2 Q Going back to the beginning of the night when
3 you were being questioned by the police officer, did any
4 police officer ever advise you that you had a right not to
5 answer questions if you didn't want to?

6 A No, sir.

7 Q Did any police officer ever tell you, you
8 had a right to counsel?

9 A No, sir.

10 Q Did any police officer ever tell you that
11 something that you said will be used against you?

12 A No, sir.

13 Q Coming to the questioning by the assistant
14 district attorney in the early morning, did the district
15 attorney advise you that you had a right not to answer
16 questions?

17 A Yes, he did.

18 Q At the time he gave you that advice, had you
19 already confessed to a great number of crimes to the police?

20 A Yes.

21 Q Did the district attorney tell you something
22 you said can be used against you?

23 A I believe he did, sir.

24 Q Did he tell you you had a right to a lawyer?

25 A No.

1 pt

Lluveras-direct

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2 Q After that night of questioning did you remain
3 in jail until the time of your trial?

4 A Yes.

5 Q And your sentence was in March of 1961, is that
6 correct?

7 A Yes, sir.

8 Q Following your sentence, did you serve 12
9 years in jail?

10 A Just about.

11 Q When did you get out of jail?

12 A January 27, 1971.

13 Q That's about three years ago.

14 A '72.

15 Q '72?

16 A Right, '72.

17 Q Since May 5th of 1960, have you ever taken any
18 drugs of any kind?

19 A No, sir.

20 Q Would you describe the activities that you
21 conducted in your last years in jail just before your release.

22 A I've been affiliated with numerous organiza-
23 tions.

24 MR. HAMMER: Objected to as irrelevant, your
25 Honor.

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2 THE COURT: I assume Mr. Leval must have a
3 purpose in mind. I will take it subject to your objection.

4 MR. LEVAL: Your Honor, I really would like
5 that your Honor has in the record a great deal of testimony
6 about the sort of person that the defendant was at the
7 time of these events in question, and I would like to offer
8 a little bit of testimony showing what his life has been
9 like recently in the last few years, to complete the
10 picture of his character, of the person whose credibility
11 your Honor is being asked to judge.

12 THE COURT: Very well. I will receive it.

13 A In 1968, I believe, I helped found the
14 self help program in prison that dealt with ex-drug addicts
15 as well as people who had problems, as well as getting
16 myself together. In the Green Haven institution I was
17 affiliated with the Honduras program which entailed
18 militants that put the aggressiveness into something
19 meaningful, so when he went out he could be involved in
20 something meaningful and functioning in the community.

21 I was also affiliated with Reality House as a
22 counselor. That entails a drug program. I was also
23 affiliated and founder of one of the Spanish organizations
24 there, due to the fact that they had a lot of language
25 barriers, and we were trying to help each other. New life

1 pt

2 came into the institution when the people were seeing the
3 only way they can do something meaningful was if they got
4 themselves together and bring this to the people in the
5 community.

6 I have seen a lot of people with talent, and
7 my objective at the time was to try to help as much as
8 possible.

9 Q Did you work in the South 40 program?

10 A I was also a member of the cadre of the South
11 40 wherein we structured a model prisoner and had other
12 people from various churches and programs and agencies
13 coming in to find out what we were all about and setting
14 up different resources in the community so when the
15 brothers of the institution went out, they had a place to
16 stay or a job available for them, and functioning in some-
17 thing that would be meaningful in the community.

18 Q Did you play a role in connection with a
19 prison riot in Clinton?

20 A This was in Auburn State Prison and this was on
21 November 4th, 1970. A riot was had in Auburn Correctional
22 Facility where 25 correction officers were captured and
23 the Spanish-speaking population wanted me to represent
24 them, because at the time I was getting involved with legal
25 matters and things of that nature, and I was respected in

1 pt

2 Divided-direct

3 63

4 the institution by those brothers because I was always
5 trying to help. So, it was a matter of explaining to
6 the administration that the Spanish population did not
7 have anything to do with the riot, that we did not want
8 no part of it and although we had grievances, if they were
9 heard we would be more than glad to tell them, but other
10 than that we did not participate.

11 And, upon the Deputy Commissioner Butler, the
12 Honorable Butler coming in and telling us exactly what was
13 in store for the people of the population I helped, I was
14 one of the inmates helped get everybody back in the cells.

15 I took the platform and spoke to them and I
16 was resented for doing this with a lot of the inmates.
17 A large majority of the population did realize what the
18 consequences could be, and after several hours, some of
19 we were able to go back to the cells and then we had the
20 opportunity of talking with the Honorable Butler with res-
21 pect to what the Spanish population grievances was, and
22 different groups and whatnot spoke with respect to their
23 grievances.

24 Q Since your release from prison have you been a
25 student?

26 A Yes, I have been a student at Maris College
27 since my release. In fact, I went directly to the school.

1 pt

2 I came out January 27th, I registered the 28th and
3 started classes the 31st of January, 1972.

4 Q. Would you describe to the Court some of the
5 activities you are engaged in, in addition to your studies,
6 at Maris College?

7 A. In addition to that I have formulated an ex-
8 offender advisory committee wherein we help ex-offenders
9 come to our school and deal with them with respect to giving
10 them a sense of direction so they don't go astray and
11 go into any negative aspects at all.

12 I have also become a member of the Derwell
13 Alliance, one of the organizations in the school, and it
14 has a very good reputation. We get involved with community
15 activities such as Mother Cabrini. A lot of members go
16 there and volunteer services and counseling the kids at
17 this place, which is an orphanage home, Mother Cabrini
18 on the Hudson.

19 Also members from our organization go to
20 Green Haven Institution on Tuesdays and Thursdays, and I
21 coordinate this and we do basic elementary tutorial pro-
22 grams and help the Spanish-speaking inmates there so they
23 can learn English. We realize the language barrier causes
24 a lot of conflict and so we have been doing our best to
25 assist in any way possible.

1 pt

Lluveras-direct

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2 Q What have you done during your summer vacations?

3 A In 1973, I had the opportunity and pleasure
4 of working with the Center of Puerto Rican Studies, and
5 I also was coordinating a prison task force wherein we
6 were bringing to the student community what the brothers were
7 doing inside and having them go to the institution. We
8 talked to the Commissioner of Corrections, and with his
9 consent we were able to go to Green Haven institution and
10 start a program there, a college program there. Once the
11 individual gets a high school equivalency and whatnot, we
12 were teaching courses there and bringing distinguished
13 people from the community to explain how they can assist,
14 assist solving problems that exist in the community and
15 we were able to speak to the president in The Bronx,
16 149th Street and the Grand Concourse -- the Board of
17 Education, I guess -- to have the inmates going to the
18 schools. We have a lot of inmates that were transferred
19 from Green Haven to Sing Sing and from there they go
20 directly to school there. In addition to that I conducted
21 seminars at 33 West 42nd Street.

22 Q At the City University?

23 A Yes; with Judge John Carroll of The Bronx,
24 an associate professor in addition to being a judge, and
25 once a week -- twice a week we conduct seminars and for all

1 pt Lluveras-direct -cross 66

2 students all over New York City, and finding out how we
3 could help the people in the institutions as well as people
4 in the community, in our community that are going straight.

5 Q When you say "our community" --

6 A Puerto Rican community and all communities in
7 New York City that we felt was in need of some assistance

8 MR. LEWAL: I have no further questions at this
9 time.

10 THE COURT: Mr. Hammer.

11 CROSS-EXAMINATION

12 BY MR. HAMMER:

13 Q Mr. Lluveras, you were present in court when
14 Dean Ferrer testified, were you not?

15 A Yes, I was.

16 Q Do you recall his testimony, the fact that when
17 you were involved in the drug scene, you weren't a very
18 trustworthy person?

19 A Yes, I do.

20 Q Do you agree with that characterization?

21 A Yes, I would go so far as to agree with that.

22 Q When you were addicted to heroin, what was
23 your source of income at the time?

24 A I worked in various places two, three months. I
25 can't say exactly, but I was making maybe a total of \$85,

1 PT Bleveras-cross 67

2 when I did work, a week. I would work as a caster in
3 jewelries and things of that nature, dry cleaners as
4 a presser, when I did work, which was, you know, I may
5 work in a place for two, three months and quit.

6 THE COURT: What kind of work did you do?

7 THE WITNESS: I was a caster in white-metal
8 Jewelry. I was also a presser, dry cleaning. I learned the
9 job in 1956 while incarcerated, so after that I was
10 pressing. I also worked as a shipping clerk, you know,
11 delivery boy, in telegram places. I did about anything
12 I possibly could at one time.

13 Q. Masdie income that you derived from this
14 employment sufficient to buy drugs?

15 A. No, it wasn't at all.

16 Q. How were you able to afford drugs?

17 A. I used to hustle in the streets.

18 Q. When you say "hustle" --

19 A. You're right, it entails a lot of things.
20 Sometimes it's a matter of gambling, playing dice, playing
21 cards, robbing people, finding out where people kept --
22 the dope addict, snatching, or those selling dope,
23 ripping them off, possessing dope, and dealing with dope.
24 In any way I saw fit to support my habit, this is what I
25 did.

1 pt

Bluveras-cross

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2 Q Did you ever get any money from your parents?

3 A My parents were able to give me a few dollars
 4 but it didn't amount to too much. Then again, it wasn't
 5 I was constantly going to them. They gave me what they
 6 could. Three dollars, four. They were up tight at the
 7 time.

12x 8 Q Did they know you were on drugs?

9 A Yes and no. After they first found out, this
 10 was in '56, when I had to go to the hospital I would always
 11 say, "No, mom," and things of that nature. When she did
 12 find out, I would leave the house and don't come back for a
 13 few days. Since she was my mother and out of love and
 14 affection, she accepted me, and just hoped I would one day
 15 turn myself in, and I told her I was in programs, when I
 16 wasn't.

17 Q Did you ever take money from her without asking?

18 A As a child, I think I took money from her
 19 before I even took drugs, you know, \$2 out of her pocket-
 20 book or things of that nature. Stealing from her directly,
 21 there was nothing to steal from her. She didn't have
 22 money. I would only be taking milk money and things like
 23 that.

24 Q You were arrested on May 5th of 1960, is that
 25 correct?

1 pt

Lindner-cross

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2 A Correct.

3 Q Did you say you voluntarily accompanied the
4 police to the station house after you found out that they
5 were looking for you?6 A Voluntarily? I had no choice. They were at
7 my house and I had to leave with them. It was a matter
8 of me getting a scene and I didn't want that.9 Q You returned to your house knowing the police
10 were there waiting for you?11 A They were there the day before, yes, and I
12 didn't want my mother to be going through no changes and
13 so I went there.14 Q A You testified that you were accompanied to the
15 police station by a friend.16 A Yes. In fact, a friend had went with me to my
17 house. It was the wife of one of the brothers that I stayed
18 in his house that night and she accompanied me to my house
19 and she came with me in the police car to the station.

20 Q How long did she stay with you?

21 A Until I found out that the detectives was not
22 going to let me leave the police station, so I told her to
23 go home and the detectives told her, "It's all right, tell
24 his mother he will be home by 12 o'clock or so."

25 Q Was that some time after 6 p.m.?

2 A Around 6:30 or so, when I first approached
3 him to ask for permission to leave for awhile. Somewhere
4 around that.

5 Q You had been arrested before, hadn't you?

6 A Yes.

7 Q About how many times?

8 A I was arrested in 1956, with two and a half
9 years of drugs, for six quarters. I was arrested as a
10 youngster, juvenile delinquent, not going to school,
11 staying out late, and I believe I was involved then with a
12 burglary -- not a burglary -- snatching things off a candy
13 stand, fruit stand on 14th Street at a very early age. That
14 was my first encounter with the police.

15 Q When you were arrested, you were brought to
16 court, weren't you?

17 A When I was first arrested, I was taken --

18 Q I am speaking previously. You had been brought
19 to court.

20 A On this case here?

21 Q Not on this case, but the other cases?

22 A I was taken to juvenile delinquent court,
23 22nd Street, Children's Court.

24 Q And the other occasions you were taken to
25 Criminal Court or --

1 pc

Lluveras-cross

2 A. 100 Centre Street.

3 Q. When you were arraigned in Criminal Court or
4 the Magistrate's Court, you were advised of your right to
5 counsel, weren't you?

6 MR. LEVAL: On what occasion?

7 MR. HAMMER: On the instances where the
8 petitioner was arrested prior to 1960.

9 MR. LEVAL: When he was twelve years old?

10 MR. HAMMER: And subsequently.

11 A. I don't believe being told whether or not, when
12 I was 12 years --

13 Q. What about 1956?

14 A. I believe that was done in Magistrate's Court.

15 THE COURT: When were you born, Mr. Lluveras?

16 THE WITNESS: July 12, 1938.

17 Q. In 1956 you were about 18?

18 A. 17, going on 18.

19 Q. And you were told when you got to court that
20 you had the right to an attorney?21 A. I believe I was asked did I have a lawyer and
22 they appointed a Legal Aid. I can't recall if I was told
23 in 1956 by the Court. In fact, I never took it as some-
24 thing serious at the time.

25 Q. Did you know that a person charged with a crime

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2 was always entitled to a lawyer?

3 A. No, sir, no, I didn't. At that time--

4 Q. After your experience in 1956 did you know that
5 a person who was charged with a crime was entitled to a
6 lawyer?

7 A. No, I didn't even know that.

8 Q. Did you know that if a person had some involve-
9 ment with the law one way or the other, a lawyer could be
10 helpful to him?

11 A. Yes, I guess I did know that.

12 Q. At the time of your arrest in 1960, did you
13 presently at that time have pending a claim against the
14 City of New York?15 A. Transit Authority. I had fell down the train
16 tracks, subway tracks, and fractured three ribs, and I
17 had a lawyer by the name of Melvin Reissman.18 Q. Is it not true that you carried the lawyer's
19 business card in your pocket?

20 A. Yes, I did.

21 Q. Did you have it in your pocket at the time of
22 your arrest?

23 A. Yes, I did.

24 MR. LEWIS: Excuse me, your Honor. I would
25 like to object at this point. Petitioner testified in the

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2 earlier hearing that he asked the police for a lawyer and
3 gave them the lawyer's card and that he was refused per-
4 mission to see his lawyer. I said in my opening statement
5 that issue: like -- perhaps I didn't make it clear --
6 Issues involving affirmative misconduct on the part of the
7 police, we are regarding for the purposes of this hearing
8 as concluded by Judge Davidson's findings in the earlier
9 hearing and I did not ask Mr. Lluveras on his direct about
10 his having asked for a lawyer and been refused by the
11 police because I didn't want to put before your Honor
12 accusations of misconduct of the police which have been
13 settled and out of the case. I don't want Mr. Hammer to
14 raise an inference that Mr. Lluveras is lying or was giving
15 different testimony earlier. He would have given similar
16 testimony on those instances, but I have directed him not
17 to go into those accusations, which I don't think should be
18 cluttering the record before your Honor because rightly
19 or wrongly they have been judicially decided.

20 THE COURT: In view of that concession, Mr.
21 Hammer, I think we can proceed to the matter which really
22 concerns us and that has to do with the alleged causal
23 relationship between his confession and his physical
24 condition at the time.

25 MR. HAMMER: Very well, your Honor. I should

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2 point out I was trying to elicit the testimony for the
3 purpose of determining the petitioner's awareness of his
4 rights.

5 THE COURT: They are all irrelevant here. At
6 least, they have been concluded by prior proceedings, and
7 it has been so conceded by Mr. Leavel.

8 BY MR. HAMMER:

9 Q Mr. Lluveras, at what point during the course
10 of the evening that you were questioned, to your recollec-
11 tion, did you say or did you feel that you were no longer
12 able to control yourself?

13 A I would go so far as to say that when I was
14 being questioned, okay, and the symptoms started getting
15 heavier, for the need of drugs, which came about 8, 9,
16 10 o'clock, 11, heavier and heavier and I really wasn't
17 myself as of that time.

18 Q During the time you say you were questioned,
19 was this questioning constant or intermittent?

20 A It was on and off. It goes on an hour and then
21 maybe a few seconds or a minute or so they would leave me
22 alone. Then I was confronted again by other officers. It
23 went through like this all night long, to the wee hours in
24 the morning.

25 Q Did you ask any of the officers for food?

1 pt

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2 A No. I just asked for a fix.

3 Q You say you had been confronted with a whole
4 list of crimes they wanted you to confess to.

5 A That is a fact.

6 Q Did you confess to all of them?

7 A At that time, yes, I said I did them all.

8 Q Were you accused of committing a murder?

9 A Yes, I was also accused of committing a murder.

10 Q Did you confess to that?

11 A That wasn't on the list, no.

12 Q That was not on the list?

13 A No.

14 Q You were accused but you did not confess to
15 that?16 A No, sir. I told them what they wanted me to say
17 and I would say it.18 Q But yet, through all your illness and dis-
19 comfort, you did not confess to this murder?20 A No. I was almost on the verge. Like I said,
21 all they had to do is tell me exactly that they wanted me
22 to say and I would have said it. I feared fessing up to
23 a charge of murder I didn't commit, just like I feared
24 going through pains in respect for the need of drugs,
25 okay, and this was just one of those cases.

1 pt

Iluveras-cross

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2 Q You were sick enough to confess to a robbery
3 but not sick enough to confess to a murder?

4 A I was sick and in respect to a murder case it
5 was a matter of them telling me exactly what to say. I
6 didn't know what to say. I didn't know how the murder
7 was committed, how it was committed, and unless they would
8 have told me precisely what to say, I couldn't have said
9 anything.

10 Q Prior to your making a statement concerning a
11 robbery or robberies, were you shown to any of the alleged
12 victims?

13 A . . . I was taken out the precinct at approximately
14 about 11:30 or 11 o'clock or maybe 10, I'm not quite sure
15 as to the time, and taken down to 96th Street, okay, to a
16 Hotel, Park View Hotel, and I was taken in there and they
17 had someone come out of a room and he kept walking by,
18 and after they -- first the man was saying yes, yes, yes
19 yes, that's him, that's him, but as I looked at the man I
20 noticed that the man wasn't looking at me, that the man in
21 fact was blind and I told this to the officers, and after
22 that they just took me out and put me back in the car,
23 and took me directly to the precinct again.

24 Q Was this the place you were accused of holding
25 up, that you were ultimately convicted of?

2 A This was a place I was accused of having killed
3 someone, two people, a homicide charge.

4 Q You never confessed to that?

5 A I never committed it, no, sir.

6 Q Were there any other alleged victims who
7 identified you that evening?

8 A Not that I could recall, no.

9 Q You're positive about that?

10 A Not that I could recall. If they did, it must
11 have been through one of those glass windows because at the
12 time they had a way of having people come to see you or
13 view you through some kind of window. They have you stand
14 on one side of a door and people would look through the
15 other side and you couldn't see who was looking at you.

16 Q About what time of the evening did you make a
17 statement to the police that you confessed to the robbery
18 for which you were convicted?

19 A I didn't confess to the robbery that I was
20 convicted of.

21 Q You made an incriminating statement to the
22 police, didn't you?

23 A I made a statement to the police that I com-
24 mitted a crime at 157th Street between Seventh and Eighth
25 Avenue, a building, in fact, that was a coal yard, that

1 pt

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2 never existed, there never was a building there. In so far
3 as to having committed a crime there, it was totally
4 impossible. The crime that they allege I committed was
5 452 Fort Washington Avenue.

6 Q And you never stated to the police that you had
7 committed that robbery?

8 A No, sir.

9 Q Did you later make a statement to an assistant
10 district attorney, Assistant District Attorney Sandler
11 that you committed that robbery?

12 A No, sir.

13 Q You are positive now?

14 A I'm positive.

15 Q Did you ever complain to Mr. Sandler about your
16 condition?

17 A I told him I was feeling bad. I believe I told
18 him I was feeling bad. I think it was something that could
19 have been observed. I was sick all the time. I reached
20 a point where I can't say much how I felt with the exception
21 that I had been there all night long and all I wanted to do
22 was they could stop questioning and leave me alone because
23 I realized I wasn't getting no fix.

24 Q But you never said to Mr. Sandler, you never
25 came out and said, "I'm sick, leave me alone"?

2 A No, I don't recall telling him, "I'm sick,
3 leave me alone." No, I don't recall that. I don't
4 recall that at all.

5 Incidentally, if I may, that is, at the time
6 that I was being looked for, I was hanging out in a gambling
7 house in my own community and I distinctly recall giving a
8 description of this place, how it looked, and I believe some
9 of that was used as part of the statement as to a crime
10 allegedly committed at 452 Fort Washington Avenue.

11 Q Was this brought out by you at the trial or
12 the hearing, the description you gave was a fictitious
13 description?

14 A Yes, I believe I told them that in court, that
15 I had committed a crime at 157th Street. In fact, in
16 the answers and questions obtained in 1960 I stated that I
17 committed a crime at 157th Street between Seventh and
18 Eighth Avenue. The transcript that was submitted as an
19 exhibit clearly indicated that I confessed to a crime
20 committed at 157th Street between Seventh and Eighth
21 Avenue, but not Fort Washington Avenue at all. Even
22 though the setup of the apartment, or whatever, the amount
23 of people in it, as I stated before, it was a matter of
24 me being in a gambling house in my own community and in
25 addition, the other defendants had been arrested before me,

1 pt

Dluveras-cross

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2 and, you know, they could work it out anyway they wanted to.

3 Q You have sort of lost me for the moment. You
4 stated -- and correct me if I am wrong -- that you had,
5 in confessing the Fort Washington crime, you gave a de-
6 scription of a gambling place that you frequented, is that
7 correct?8 A No, sir, I didn't confess to the Fort Washington
9 Avenue crime at all. When I was asked did I commit a
10 gambling robbery I said yes. They asked me where and I said
11 157th Street between Seventh and Eighth Avenue. Then it was
12 a matter of me describing the only place I know as a gambling
13 house which is at 111th Street and Park Avenue and Madison
14 Avenue.15 Q At any time during the course of the trial of
16 the hearing, did you testify that the place you described as
17 being on 157th Street was actually a description of the
18 place at 111th Street?19 A No, I didn't say that because it was a matter
20 of me trying to find out and absorbing for myself, okay,
21 how I went about giving a description of a place, you know,
22 that was utilized, a crime I didn't commit and it dawned on
23 me the only way I could possibly describe any gambling house
24 is the fact I hung out in a gambling house at 111th Street.
25 Apparently it fit the description that they wanted to hear

1 pt Litteras-cross Redirect

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2 and know, and it was used.

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3 MR. HAMMER: I have no further questions at this
4 time, your Honor.

5 THE COURT: Do you have any further questions?

6 MR. LEVAL: I have a few brief questions,
7 your Honor.

8 REDIRECT EXAMINATION

XXX

9 BY MR. LEVAL:

10 Q With respect to the last series of questions
11 that Mr. Hammer asked you, you admitted to the police, did
12 you not, that you had participated in a card-game robbery?

13 A Yes.

14 Q But you gave an address different from the
15 address of the card-game robbery for which you were
16 prosecuted?

17 A Yes.

18 Q Then you said to Mr. Hammer that you never con-
19 fessed to a robbery, what you meant was you confessed to a
20 robbery at a different address, is that right?

21 A Yes.

22 MR. LEVAL: On page 72, Mr. Hammer, of the
23 transcript of the hearing before Judge Davidson, in 1966,
24 may I show this to the witness?

25 THE COURT: Yes.

1 pt

Liuveras-redirect

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2 Q Do you recall being on the stand in the course
3 of a hearing brought on at your instance in 1966, with
4 respect to your confession?

5 A Yes.

6 Q And do you recall being asked the following
7 questions and giving the following answers in the course
8 of that hearing:

9 "THE COURT: And in the entire course of the
10 questioning and the entire course of the time that you
11 were at the police station, you never admitted participating
12 that means taking part in, that murder, is that right?

13 "THE WITNESS: I did admit that I committed some
14 of that murder, yes, sir, I did admit it.

15 "THE COURT: You admitted that you committed some
16 of the murder?

17 "THE WITNESS: I said yes, I committed the
18 murder and they said, well, describe the place to me and
19 I said, but I didn't commit the murder, you know, you are
20 making me tell you what you want me to say and I'll say it
21 because I was ready to admit the murder too, I was ready to
22 admit to the murder.

23 "THE COURT: You were ready but never did?

24 "THE WITNESS: I admitted to it but that's when
25 they asked me, well, how did you do it, what did you do.

1 pt

Liuveras-redirect

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2 They said you could make it easy on yourself if you say
 3 that you was the getaway man and this --

4 "THE COURT: As soon as you couldn't describe
 5 the case, they stopped asking you about the murder, is that
 6 right?"

7 Do you recall hearing those questions and
 8 giving those answers?

9 A Partially, yes.

10 Q At the hearing, did you say that you had com-
 11 mitted a murder?

12 A At the hearing?

13 Q I'm sorry, when you were being questioned on
 14 the night of May 5th and they asked you did you commit a
 15 murder, did you say "Yes, I did"?

16 A No, I didn't.

17 Q Did you at one point say yes and then no?

18 A In the questions and answers, you have reference
 19 to. I recall telling them, tell me what they wanted me to
 20 say and then I would say it. This is what I recall in
 21 respect to the murder case. And, in the process of talking
 22 to the District attorney, I also distinctively recall
 23 telling him that they had told me something regarding a
 24 getaway man, to make it easy on myself.

25 MR. LEWIS: I have no further questions.

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Bitterman-redirect

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2 THE COURT: No further questions?

3 MR. HAMMER: No further questions.

4 THE COURT: Thank you. You are excused.

5 THE WITNESS: Thank you.

6 (Witness excused.)

7 THE COURT: Does the petitioner rest?

8 MR. LEVAT: Your Honor, I will have one,
9 possibly two brief witnesses which should not take more than
10 15, 20 minutes. They are coming at 2 o'clock.11 THE COURT: Mr. Hammer, do you expect to
12 introduce any affirmative evidence?13 MR. HAMMER: Your Honor, it is my intention
14 at the moment to offer into evidence the transcripts of
15 the trial and the transcripts of the Huntley hearing. To
16 the extent I have been able to get hold of the officers
17 involved, Detective Coyne has no present recollection of
18 what occurred, and I assume, I must assume, if he had, he
19 would testify in accordance with his previous testimony.20 Former Assistant District Attorney Sandler, now Judge
21 Sandler of the Court of Claims assigned to the Supreme
22 Court, has a calendar of his own today. He is over in the
23 narcotics part. I frankly, under the circumstances,
24 I felt it would be inappropriate to try to get him over
25 here unless the Court feels it absolutely necessary. I am

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2 willing, under the circumstances, to submit on the
3 transcripts previously made.

4 THE COURT: We can discuss that this afternoon.
5 I take it then that the hearing will be concluded this
6 afternoon.

7 MR. LEVAL: Yes, your Honor.

8 THE COURT: Then I would like to hear closing
9 arguments and go over this with you.

10 Do you expect to object to the introduction of
11 the transcripts?

12 MR. LEVAL: No, your Honor,

13 THE COURT: Either of the hearing or the
14 trial?

15 MR. LEVAL: No objection.

16 THE COURT: We will then stand recessed until
17 2 o'clock.

18 MR. LEVAL: May I say as to that I assume the
19 question is directed to the portions of the trial and hearing
20 which relate to the issue before the Court?

21 THE COURT: I assume so, yes.

22 MR. HAMMER: It will be offered for that purpose,
23 your Honor.

24 THE COURT: Yes.

25 MR. HAMMER: As to the general condition and

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85a

2 volunteeriness of the petitioner's statements.

3 THE COURT: Yes.

4 We will stand adjourned until two p.m.

5 (Time noted: 12:45 p.m.)

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2 AFTERNOON SESSION - 2 P.M.

3 THE COURT: You may proceed, Mr. Leval.

4 MR. LEVAL: Your Honor, the next witness I am
5 going to call is down in the men's room and will be back
6 in a second.7 In the meantime, if I could proceed to another
8 matter, Judge John Carro, of the Criminal Court, is
9 sitting in Bronx County, had wanted to appear as a
10 character witness in this case and I wasn't sure whether
11 he was going to be in town today or not. He said he may
12 have to be out of town and apparently he has had to leave
13 town but he left me an affidavit consisting of facts that
14 would ordinarily be given by a character witness for the
15 petitioner, Mr. Lluyeras, and if the Court would receive
16 this affidavit, and if there is no objection from the
17 People, I would like to file the affidavit of Judge John
18 Carro.19 I would like to add, your Honor, that if Mr.
20 Hammer wanted to cross-examine Judge Carro at some future
21 time, Judge Carro agreed that he would be amenable to
22 coming when it is convenient.

23 THE COURT: How do you spell his name?

24 MR. LEVAL: C-a-r-r-o.

25 THE COURT: He is a judge of what court?

2 MR. LEVAL: The Criminal Court of the City of New
3 York.

4 THE COURT: May I go off the record for a minute.

5 (Discussion off the record.)

6 MR. LEVAL: I will withdraw the offer of the
7 affidavit, your Honor.

8 I would like then, your Honor, to call Professor
9 Frank Bonilla as the next witness.

10 F R A N K B O N I L L A, called as a witness by the
11 petitioner, being first duly sworn, testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. LEVAL:

15 Q Sir, would you describe the position which you
16 hold and your occupation, please.

17 A I am a Professor of Political Science and
18 Director of the Center for Puerto Rican Studies of the
19 City University of New York and I am in the doctoral pro-
20 gram in political science there.

21 Q Do you know the Petitioner, Americo Lluyeras?

22 A I have known him for approximately two years.

23 Q Will you describe the circumstances in which you
24 have known Americo Lluyeras and the persons who also know
25 him.

1 ebt

2 Bonilla-direct

3 88

4 A I have known Americo Lluyeras in three
5 situations, one where I first knew him, which was at Green-
6 haven Correctional Facility in the course of work that our
7 Center initiated there with inmate organizations in order
8 to bring some educational programs into the prison that were
9 directed chiefly to inmates of Hispanic background.

10 Some months after that, Americo was released and
11 was employed at the Center which I direct for approximately
12 months, three months, during the summer of '73.

13 Since then I have visited him on several occasions
14 at Maris College where I understand he is still enrolled.

15 Q What were the occasions of the visits at Maris
16 College?

17 A They were chiefly in connection with work that
18 was continuing at Greenhaven Correctional Facility with
19 the inmate organization there and also to participate in
20 programs that Americo and others organized at the college,
21 educational programs, conferences, and things of that kind.

22 Q Now, based on your knowledge of the community in
23 which you have seen Americo Lluyeras work, and based on
24 your knowledge of people who know him and who have worked
25 with him and who have been familiar with his conduct, can
you state to the Court what his reputation is in these
communities for truth and veracity and dependability?

2 A I think in all three of those settings I can say
3 without hesitation that to my knowledge he does command
4 the respect and that people in all of those settings see
5 him as a person that has proven to be reliable.

6 I want to make the additional observation that
7 there are situations in which there is a lot of suspicion
8 and distrust of individuals and their motives, and that
9 those are difficult places for persons to exercise leader-
10 ship and command respect, and that to my knowledge he has
11 been able to do that both within the prison in terms of
12 inmates there and people coming in from outside to work with
13 him, and in the circle of colleagues that he had while he
14 was working at the Center and with the student groups,
15 and others with whom I have seen him at Maris College.

16 MR. LEVAL: Thank you. No further questions.

17 MR. HAMMER: I have no questions, your Honor.

18 THE COURT: All right. Thank you, Professor.

19 (Witness excused.)

20 MR. LEVAL: The petitioner rests, your Honor.

21 MR. HAMMER: If the Court please, at this time
22 the respondent would like to offer and have deemed marked
23 in evidence the transcript of the Huntley hearing before
24 Judge Davidson and the trial transcript.

25 MR. LEVAL: No objection.

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2 THE COURT: I thought you were going to limit
3 your offer to certain portions of those proceedings.

4 MR. HAMMER: Well, your Honor, what I propose to
5 do is simply to refer to those portions on my post-trial
6 memorandum which pertain to the specific issues raised at
7 this hearing.

8 I do not intend to go into the issues that Mr.
9 Leval has stated on the record to be concluded. I don't
10 have specific page references now but I will at that point.

11 THE COURT: Then I take it that you are offering
12 them only to the extent that they are relevant to the issue
13 before me.

14 MR. HAMMER: That is correct, your Honor.

15 MR. LEVAL: I suppose, your Honor, that if Mr.
16 Hammer makes reference to any part of the transcript in
17 his brief which I believe are not relevant and are not
18 admissible, I can put that objection in some answering
19 paper so that your Honor can rule on it at that time.

20 THE COURT: Certainly. We will arrange such
21 a schedule at the conclusion of the argument.

22 Very well. Then they will be deemed marked as
23 State exhibits.

24 MR. HAMMER: If it is all right with the Court,
25 I would like to take them back with me. The Huntley

2 hearing would be Exhibit A.

3 (State Exhibit A was received in evidence.)

4 MR. HAMMER: And these two.

5 THE COURT: Call them B and B-1.

6 (State Exhibits B and B-1 were received in
7 evidence.)

8 THE COURT: Do you now rest?

9 MR. HAMMER: I should like, if the Court please,
10 to renew my motion to strike the character testimony as
11 being irrelevant; and also at the end of the case, I
12 should like to move to dismiss the petition on the ground
13 that the petitioner has failed to sustain his burden of
14 coming forward on the question of persuasion.

15 THE COURT: Well, on the second motion, I reserve
16 decision. I reserve decision as to whether or not he has
17 sustained his burden of proving the involuntariness of the
18 confession by a fair preponderance of the evidence. I
19 think that is his burden. I am not prepared to rule on
20 that now, so I will reserve decision.

21 MR. LEVY: Excuse me, your Honor. My understand-
22 ing is that the burden is on the People to prove--

23 THE COURT: Excuse me. I misspoke myself.

24 MR. HAMMER: At the Huntley hearing, but upon
25 this hearing I submit that it is the petitioner that bears

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2 this burden. The tables are turned. Here he is in
3 court as the petitioner.

4 THE COURT: I looked at some cases just before
5 taking the bench and I thought that you had that burden.
6 I thought the burden did not change. I will take another
7 look at it.

8 (Pause.)

9
10 THE COURT: This is a federal habeas corpus
11 proceeding, is it not?

12 MR. LEVAL: Yes, your Honor.

13 THE COURT: Well, as I understand it, the
14 prosecution must establish voluntariness by a fair pre-
15 ponderance of the evidence, and I think that there are
16 binding federal precedents on that very point. If I
17 am mistaken you can correct me in your post-trial brief,
18 but I think there are both Supreme Court and Second
19 Circuit cases on that point.

20 MR. LEVAL: That is my understanding, your Honor.

21 MR. HAMER: I will try to brief that, your
22 Honor.

23 THE COURT: You see, it might make all the
24 difference in the world as to who has the burden of proof.
25 It seems to be more consonant with the federal view, since
at this point you have to sustain the validity of the

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2 proof that you offered against this defendant, and it
3 seems to me that he doesn't have to come in to prove any-
4 thing. He is an accused person who has already been found
5 guilty by that he claims to have been tainted or invalid
6 evidence, and so you go forward in this collateral proceed-
7 ing to sustain the validity of the evidence upon which you
8 claim his conviction validly stands. The burden
9 should be yours and not his.

10 MR. HAMMER: With respect, your Honor,
11 that as he is the petitioner, he is the proponent of per-
12 haps a negative proposition, but it is quite true that
13 the question is, the evidentiary standard, of course, is,
14 since Leggo v. Toomey, fair preponderance of the evidence.

15 I should say this, that under Leggo v. Toomey
16 all that need be shown is that by a fair preponderance of
17 the evidence the admission was voluntary.

18 However, in this proceeding, I would suggest
19 that it is the petitioner's burden to show that there is
20 less than a fair preponderance of the evidence but, as I
21 say, your Honor, I will try to brief that as best I can.

22 THE COURT: I don't think that's correct. You
23 see, by being a petitioner he doesn't assume any burden
24 any more than by being a defendant he assumes a burden.
25 By being a petitioner all he does is to invoke the writ of

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3 habeas corpus as a means of relieving him of the criminal
4 penalty which he says was improperly imposed or of
5 relieving him of a detention which he says is illegal.

6 Now, we have passed the jurisdictional basis
7 for this hearing and there is no point in discussing that,
8 but I shall suggest that it is properly in the State's
9 burden and is not his because of the fact that he is a
10 Petitioner, and tendering a negative proposition does not
11 change the burden of proof one whit.

12 However, you will deal with that in your post-
13 trial brief, and unless I am persuaded to the contrary, I
14 propose to proceed on the assumption that the burden is
15 yours and not his.

16 MR. HAMMER: Very well, your Honor, I will try to
17 do that.

18 THE COURT: Do I understand that both sides rest
19 then?

20 MR. HAMMER: That's correct.

21 MR. LEVAL: Yes, your Honor, we rest.

22 THE COURT: Mr. Leval, since I assume that he
23 has the burden of proof, I suggest that you speak first
24 and then I will hear Mr. Hammer in reply.

25 I didn't rule on your other motion with respect
 to scriviting the character witnesses' testimony.

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2 Since the credibility of the petitioner has been
3 placed in issue here, and since this is a proceeding
4 collateral to a criminal prosecution, his credibility is
5 an issue in that context. I prefer to allow the
6 characterwitnesses' testimony to stand. I don't think it
7 should be stricken, and if you then persuade me that I am
8 in error in your post-trial brief, I invite you to do so,
9 but so far as I know, I think that is the correct view
10 and I will stand on that ruling unless you can persuade
11 me to the contrary.

12 MR. HAMMER: Very well, your Honor.

13 THE COURT: All right, go ahead, Mr. Leval.
14 Excuse me.

15 MR. LEVAL: Your Honor, I believe that in many
16 ways this is a very simple case in that it is a factual
17 case in terms of its individual facts, and I think that
18 the law is quite clear that where, by reason of withdrawal
19 symptoms for a heroin addict, as by reason of other
20 symptoms for a person suffering from other conditions,
21 if a defendant suffers from such pain during the course
22 of interrogation by the police, or by the prosecution,
23 or whoever it is, that his confession cannot be deemed to
24 have been given voluntarily of his own free will and the
25 conviction must be reversed if it depends in any part on

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2 evidence contained in that confession. There is nothing
3 new about that proposition.

4 The Collins case, for example, which we cite on
5 page 10 of our brief which I filed this morning, is quite
6 similar, and in that case the conviction was vacated by
7 reason of very similar facts on habeas corpus, pains of
8 withdrawal suffered by the defendant during his interro-
9 gation.

10 It is my understanding, as your Honor said,
11 that the People have the burden of going forward on this,
12 but I would add that I am not sure it makes a great deal
13 of difference on these particular facts who has that burden
14 because if your Honor believes the defendant's testimony
15 with respect to the pain that he suffered, then it would
16 be very, very difficult to reach any conclusion other than
17 the fact that his confession was not a voluntary confession.

18 If, on the other hand, your Honor finds that the
19 defendant is lying, is not worthy of belief, and chooses
20 further to discredit the testimony given by Dr. Blackwell
21 who supported the petitioner's allegations with respect to
22 the pain that he suffered, then your Honor will in all
23 likelihood find the other way no matter who has the burden.

24 Defendant, your Honor, was deeply addicted to
25 narcotics. His addiction had started at the age of some 14

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2 years, a very tender age, and it continued for a good part
3 of his life until the time of the confession in question,
4 which was when he was in his twenties. It was a large
5 habit. He was accustomed at that time to taking four
6 to five mainline heroin shots a day, and I think on this
7 record, as supported by Dr. Blackwell's testimony, there is
8 every reason to believe that during a long, uninterrupted
9 night, uninterrupted by sleep, I mean, a night of question-
10 ing that lasted all night long, he suffered very severe
11 pains in the nature of cramps, nausea, diarrhea, cold
12 chills, fever chills, and all of the symptoms which he
13 described, and that a confession taken under those cir-
14 cumstances, under the circumstances of a full night of
15 questioning, a full sleepless night, followed at 8 in the
16 morning by a Q-and-A interrogation period that lasted for
17 an hour and a half, by a person in those circumstances,
18 weakened by lack of sleep and food for an entire 24
19 hours, that such a confession is not consistent with
20 civilized standards by which we judge volunteeriness in our
21 courts.

22 I would say, your Honor, that the testimony of
23 Dr. Blackwell, who has very impressive credentials in
24 precisely this area of expertise, who has devoted much of
25 his life to working with drug addicts and has a great deal

1 abt
2 of medical familiarity with the symptoms of narcotics
3 addicts and the feelings that one experiences in the
4 course of narcotics addiction withdrawal pains, that the
5 testimony of Dr. Blackwell should weigh very heavily in
6 your Honor's consideration of this case and that it supports
7 Liuveras' testimony with respect to his testimony about the
8 pain of withdrawal in every respect.

9 Now, I would like to add, your Honor, that as to
10 many of the issues in this case, there is absolutely no
11 dispute. The stipulation which was filed at the
12 beginning of the case and which was received as Court
13 Exhibit No. 1 shows that the questioning went on inter-
14 mittently all night long from shortly after the defendant's
15 confinement throughout the night, and the stipulation
16 shows that the defendant got no sleep throughout the night
17 and that the Q-and-A finally occurred at 3 in the morning
18 taking one and a half hours at that time.

19 Now, on the record before the Court, I would
20 suggest to your Honor that it is an almost inescapable
21 conclusion that the defendant, in the condition in which he
22 found himself that night, did not give a voluntary con-
23 fession, that the confession that was taken from him was
24 not a product of free will and free choice.

25 Now, of course, the defendant's own testimony is

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2 something which must be judged by your Honor as to its
3 credibility even though it is very firmly supported by the
4 testimony of the doctor, and your Honor, of course, will
5 have to take that into account in considering the credi-
6 bility of Americo Lluveras. I would suggest that it is
7 quite extraordinary to have the kinds of people who have
8 gone to the trouble of coming down to court to testify as
9 to his character: a professor from his college up in
10 Poughkeepsie; two other people with whom he has worked
11 in the community, working with ex-convicts in an effort
12 to rehabilitate them. I would suggest that all of these
13 people have given very impressive testimony as to the
14 kind of character of the man whose credibility your Honor
15 is now obliged to judge, and I would suggest that the
16 Court have no fear concerning the dependability, honesty
17 and credibility of the new Americo Lluveras, now after
18 twelve years in prison, and now after some very, very
19 impressive attempts, successful attempts to rehabilitate
20 himself.

21 On that record I hope your Honor will find that
22 his testimony is truthful, and that he did suffer very
23 intense pain of withdrawal during the night of the
24 questioning, and that his conviction should now be vacated.
25

Thank you.

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2 THE COURT: Let me ask you one or two questions,
3 Mr. Deval.

4 I will have to preface them by saying that your
5 own dedication to his case and your belief in his case is,
6 in itself, a testimonial to his rehabilitation.

7 MR. DEVAL: Thank you, your Honor.

8 THE COURT: And I have no doubt that this man
9 has made a conscious and intelligent choice to follow a
10 different road from that which unfortunately led him to
11 this situation, and he has all the earmarks of an
12 estimable member of the community. He has been able to
13 put his past behind him. I am profoundly impressed by
14 that.

15 He has testified to events which occurred when
16 he was a drug addict and when he was unfortunately involved
17 in criminal activities.

18 Now, can it be said that a person who has become
19 physically affected by a vice of that kind can, by virtue
20 of subsequently rehabilitation, so improve his credi-
21 bility that the credibility is retroactively valid and
22 retroactively effective to cover a period when he was
23 afflicted by the drug habit?

24 Take a reformed alcoholic and a man who has
25 experienced the lowest possible form of human degradation

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2 such as on alcoholics, and he joins Alcoholics Anonymous
3 and becomes a distinguished member of the community. That
4 has happened in our country. In fact, I understand that
5 there is a judge of the United States Court of Appeals
6 out west who went through precisely that experience. Can
7 we say that the period of his life which is marked by his
8 rehabilitation wipes out, to the extent that it was restor-
9 ing his credibility, nunc pro tunc, the period when he
10 was afflicted by alcohol or drugs, or whatever else?

11 MR. LEVAL: Well, I would say, your Honor, that
12 the lengths to which your Honor is being asked to judge
13 his credibility are on rather narrow issues. The most
14 important aspect of his testimony goes to the kind of
15 pain that he experienced during the night of deprivation
16 of drugs during the whole sleepless night of questioning
17 by the police, and while there is no question, your Honor,
18 that back in 1960 he was in many ways the dregs of the
19 earth, he was about as un rehabilitable a character as
20 there was. He was a desperate drug addict and he cared
21 for nothing at that time but getting his next fix when he
22 needed it, and I don't think that affects the question of
23 whether he can be believed when he testified as to the
24 kind of pain that he experienced that night precisely,
25 because he was such a desperate addict. He can remember

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2 that agony. He has said that before, your Honor, on cross-
3 examination, that he supported himself during those times
4 by muggings, by robberies, or dealing in drugs, by doing
5 anything that he could do that he needed to support his
6 habit. He has not hidden that fact, and I would suggest,
7 Judge, that there is no reason not to believe, par-
8 ticularly when his testimony is so firmly supported by the
9 medical evidence that somebody in his condition would
10 necessarily have had the pains that he described.

11 I can see no reason why your Honor would feel
12 impelled to reject his testimony as to how he felt and
13 what pain he was in during that full night of questioning.

14 THE COURT: Well, one other question. If I
15 recall his testimony accurately, he asked on more than
16 one occasion for a fix. He needed drugs. He felt the
17 need for them. But did he at any time say to those who
18 were close to him that he was hungry, that he was suffer-
19 ing?

20 MR. LEVAL: He was not hungry, your Honor.

21 THE COURT: He had diarrhea and so forth and so
22 on.

23 MR. LEVAL: Not only was he not hungry but he
24 could not have eaten. He was nauseous.

25 THE COURT: Did he make any complaint about his

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2 Physical condition to anybody? 103
3
4 MR. LEVAL: Yes, your Honor. I think your Hon-
5 will find that in the record of the prior hearing he made
6 dangerous complaints and in a way -- I have wanted to avoid
7 getting into some of the is about his complaints
8 because his testimony had earlier been that the police
9 did all kind of things, beat him, and did all kinds of
10 things that the police should not have done, and I did not
11 want to trouble the Court with these kind of allegations
12 because, as I have said, rightly or wrongly, they have
13 been judicially laid to rest, I think.

13
14 There was a conflict of testimony. Lluveras
15 said the police did a lot of things that they should not
16 have done. The police denied that they did them. The
17 judge at the prior hearing had to find that one person
18 was telling the truth and that the other was lying. There
19 was no other way about it. And he found for the police
and against Lluveras.

20 There is no question that he complained bitterly
21 of many things during his prior hearing, and there may be
22 some awkwardness in the way I have truncated his testimony.
23 I have wanted to concentrate his testimony on how he felt
24 and what his withdrawal symptoms were.
25

25 THE COURT: I haven't read the transcript but I

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2 will.

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3 Is there anything that comes out of that transcript
4 that illustrates his physical condition apart from his com-
5 plaints? Is there anything there that would indicate
6 that he was suffering, that he did vomit, that he did have
7 diarrhea, and so forth and so on. Sometimes these events
8 are corroborated by circumstantial proof and are not
9 entirely subjective.

10 MR. LEVAL: I would like to say, your Honor,
11 and I meant to say in my summation remarks and I left them
12 out for some reason or another, that, first of all, the
13 police, to a degree, confirmed the fact that he was in a
14 state of withdrawal.

15 The police officers -- and I refer to the testi-
16 mony of Detective McPartland at pages 198 and 200 of the
17 record of the Huntley hearing.

18 Detective McPartland acknowledged that as the
19 evening wore on the symptoms of withdrawal became more
20 evident, and yes, he was in need of another shot, and
21 Detective McPartland said, again on page 200, "Yes, he
22 was in need of drugs. As the evening wore on the shot
23 that he had taken was wearing off then.

24 And Detective Coyne also. And both these
25 instances are cited in the brief which we have filed.

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2 Detective Come also acknowledged that the defendant was
3 in need of drugs but the detectives, in their testimony
4 tended to belittle the pain. They said, "We didn't think
5 he was that bad. He could stand up and he could talk."
6 But they acknowledged that he was in need of drugs.

7 THE COURT: That is a very important point and
8 I am glad that you brought that out. There was independent
9 corroboration of his drug withdrawal status although there
10 was disagreement as to the seriousness of it.

11 MR. LEVAL: Yes. And on that subject, of course,
12 Judge, Judge Davidson, in the Huntley hearing, showed
13 himself to be quite inhospitable to receiving anything
14 much on that subject and rejected the testimony of an
15 expert.

16 There also is considerable evidence in the
17 record concerning his willingness. For example, on
18 the issue of the murder accusation, he was confessing
19 willy-nilly to all kinds of things, and he apparently
20 said, in connection with that murder accusation, "Sure,
21 I'll confess," but then he was unable to supply the
22 details that the police wanted, and therefore they did not
23 accept the confession, but he confessed to just series
24 and series and series of crimes.

25 There also is evidence in the record --- this is

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2 more minimal -- that on occasion his answers to the
3 questions were not particularly cogent, lucid, and
4 occasionally his answers were unresponsive, rambling, and
5 not the responses made by a lively, intelligent person
6 who was freely and voluntarily saying, "Look, I want to
7 tell you that I confess to this crime, and I want to tell
8 you all about it."

9 THE COURT: All right. Thank you, Mr. Leval.

10 Mr. Hammer?

11 MR. LEVAL: Thank you very much, your Honor.

12 MR. HAMMER: If the Court please, I will be very
13 brief in my summation.

14 With respect to the testimony offered this morn-
15 ing and this afternoon, I must respectfully suggest that
16 Dr. Blackwell's testimony is of little use. He examined
17 the petitioner many years after the fact and didn't even
18 have any basis, any medical records to which he could go
19 to actually ascertain the physical condition of this
20 petitioner at the time of the events.

21 THE COURT: But he assumed facts which I could
22 readily find were authentic and true, and on that basis he
23 rendered an opinion. He assumed certain facts with respect
24 to the nature of the petitioner's drug addiction, the
25 quantity of drugs he consumed, and the manner in which

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2 they were placed into his bloodstream, and then he came
3 to certain conclusions with respect to his probable
4 condition in light of that addiction, and in light of the
5 times that he injected the last doses of drugs.

6 Now, what is wrong with that testimony?

7 MR. HAIGER: That is all well and good, your
8 Honor, except that we have the problem of a basis upon
9 which he gave this opinion, and those facts, these are
10 the hard facts that, as your Honor says, you may be in a
11 position to find these facts, but I submit, again, we go
12 on very thin ice when we assume these facts to be the
13 case.

14 There is, of course, the whole question of the
15 petitioner's credibility. Your Honor has seen fit to
16 admit a lot of testimony as to his present condition,
17 and I must say that I am happy to see that the petitioner
18 has -- I hate to use the word "reformed", because I guess
19 it is a cliche, but I am glad to see that this petitioner
20 is at least one person who has come out of a state
21 institution and has made it, apparently,

22 However, we are talking about a number of things
23 that happened a number of years ago. Judge Davidson, as
24 Mr. Leval pointed out, thought very little of the
25 petitioner's credibility.

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2 THE COURT: Yes, but then Judge Davidson never
3 confronted the issue that I am confronting, did he? He
4 rejected evidence on that score and never dealt with this
5 issue. He dealt with an entirely different issue.

6 MR. HAMMER: Right, and he wouldn't hear the
7 expert because a sufficient basis for calling an expert
8 had never been made.

9 THE COURT: Well, that was his opinion.

10 MR. HAMMER: Well, the problem here, your Honor,
11 is that if Mr. Liuveras was not a credible witness on one
12 point, why should he now be believed on another point
13 which allegedly happened at the same time?

14 Again, your Honor, of course, is the trier of
15 the facts and the person who has to judge the credibility
16 of these witnesses, but as you have pointed out, there
17 is perhaps certain circumstantial evidence which may aid
18 the Court.

19 I think one rather important point, to begin
20 with, is that Mr. Liuveras freely accompanied the police
21 to the station. The initial incriminating statements
22 I suggest to the Court, were made rather early in the
23 evening. They were repeated in the course of the Q-and-A
24 earlier the following morning.

25 Although counsel seems to suggest that differ-

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2 ing interpretations can be put on it, the fact remains
3 that while he confessed to some crimes, he vigorously
4 denied a murder and was able to maintain his position
5 despite the alleged pressure of his condition, of his
6 physical condition, as well as his own claims, which,
7 although they are not before the Court, they are in the
8 record, and he claimed that there was additional
9 pressure, so that I would submit, your Honor, that, again,
10 regardless of who bears the burden here, the fact remains
11 that although the petitioner may have been suffering from
12 withdrawal symptoms, his incriminating statements were
13 indeed voluntary, and that the petition ought to be dis-
14 missed.

15 I shall endeavor in my memorandum to elaborate
16 on that and point out to you some additional testimony in
17 the Bentley hearing transcript in particular which tends
18 to reinforce the conclusion that indeed, despite his drug
19 problem and his withdrawal from drugs, the admissions
20 made by this petitioner were voluntary.

21 Thank you very much, your Honor.

22 THE COURT: Wouldn't you accept it as a matter
23 of almost common knowledge that a person who is heavily
24 addicted to heroin for a prolonged period of time and is
25 suddenly deprived of drugs undergoes a traumatic physical

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2 experience?

3 MR. HAMMER: I'd say, your Honor, it has to
4 depend upon the person.5 The symptoms described by the expert witness,
6 Dr. Blackwell, are admittedly consistent with severe drug
7 withdrawal, but the fact remains that we only have the
8 petitioner's word for how he felt, how painful these
9 symptoms allegedly were.10 Again there still remains a question as to how
11 heavily addicted he was, how pure were the drugs --12 THE COURT: Well, I don't think I need to
13 speculate about all that.14 For one thing, he testified that he had diarrhea.
15 For another thing, he testified that he vomited. These
16 two facts alone would permit inferences regarding his
17 physical condition.18 I don't see how a person who is kept up all
19 night and has diarrhea and is vomiting can be in anything
20 but a painful and distraught state of mind. I am leaving
21 out now the chills, the stomach cramps of a severe
22 nature, and all the other things he testified to.23 If I accept those two facts alone, plus the
24 fact that Dr. Blackwell said that his complaints were con-
25 sistent with drug-withdrawal experience, it seems to me

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2 that the picture is at least roughly drawn to depict a
3 man who is undergoing a severe physical shock.

4 I could almost take judicial notice of the fact
5 that drug withdrawal is a painful and unpleasant
6 experience. I have never heard of any situation in which
7 a person can undergo drug withdrawal without inconvenience;
8 at least not heroin withdrawal.

9 MR. HAMMER: Again, your Honor, I am not denying
10 the fact that drug withdrawal can be painful and un-
11 pleasant.

12 What I am suggesting is that there has been a
13 failure of proof that this particular petitioner has or
14 was undergoing such severe drug withdrawal that he was un-
15 able to control his answers when the police said, "Do
16 you confess to this? Do you confess to this?" The
17 circumstances indicate a voluntary accompaniment to the
18 police occasion.

19 The record indicates that the initial
20 incriminating statements were made quite early in the
21 evening before the full onset of the symptoms, and again,
22 the fact remains, while he may have confessed to some
23 offenses, he vigorously denied at least one very serious
24 one. He denied a homicide, and he persisted in that
25 denial.

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2 Again your Honor will have to judge the remainder
3 of the testimony contained in the hearing transcript,
4 notably that of the police who said, "Yes, he was sick,
5 but he wasn't that sick, and the answers he gave to us
6 were indeed voluntary."

7 I can only ask your Honor to evaluate the
8 evidence in its totality, and I am sure your Honor will
9 give it all the most serious consideration.

10 THE COURT: I will do my best.

11 Now, can we accept a schedule? I wish you would
12 confer with Mr. Leval privately and tell me what schedule
13 you wish to adopt with respect to the submission of post-
14 trial briefs with an opportunity to reply.

15 MR. HAMMER: Your Honor, any briefing schedule,
16 of course, will depend upon when we can have a transcript
17 of this hearing.

18 I would ask for approximately two to three weeks
19 following the receipt of the transcript.

20 In terms of my own personal schedule, I don't
21 know what problems the reporters have but I will be tied
22 up with a number of appellate matters including an argument
23 coming up December 11th in the Supreme Court in
24 Washington, so that if the transcript comes before that
25 day, I would have to ask that I be given some time counting

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2 from the middle of December.

3 THE COURT: Well, can we leave it that you will
4 take three weeks on or after December 11th or after
5 receipt of the transcript, depending upon which comes
6 later?

7 MR. LEVAL: I must say, your Honor, I don't under-
8 stand why we have to wait for the transcript to brief this
9 one issue, so far as I know to be briefed in the case,
10 which is that Mr. Hammer doesn't agree with my view, or
11 we don't agree with each other's view of where the burden
12 lies, and there may be two or three cases.

13 What else is there to brief? The hearing was a
14 very short hearing. The transcripts have been in our
15 possession for years, and I assume that you will want to
16 point out, that Mr. Hammer will want to point out some
17 of the portions of the previous hearings which he believes
18 are favorable to his point. I don't understand why we
19 should have to wait several weeks. I mean, if it is very
20 important, I am not going to object, but it seems to me
21 that the briefing that is to be done is very simple.

22 MR. HAMMER: Well, with all respect to my friend
23 Leval, I think the transcript taken at this hearing is
24 indeed important.

25 THE COURT: I don't want to deprive you of it if

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2 you think it is important, but may I respectfully suggest 11
 3 that you don't need any more than the testimony of Dr.
 4 Blackwell and Mr. Elivorse? You certainly don't need the
 5 character witnessess' testimony.

6 MR. HAMMER: Your Honor, I have two fairly
 7 important appellate briefs plus my argument to prepare.

8 THE COURT: All right. Let's leave it that you
 9 will submit your brief not later than three weeks after
 10 December 11th or after receipt of the transcript, whichever
 11 comes later, but since we know now that the
 12 transcript will, in all likelihood, come into your hands
 13 before December 11th, you will take three weeks after
 14 December 11th and --

15 MR. HAMMER: I will do my best. If I can get
 16 it in sooner, I shall.

17 THE COURT: Very good.

18 And Mr. Leval will take whatever days he needs
 19 to reply. I suppose five days would be enough, wouldn't
 20 it?

21 MR. LEVAL: Yes, your Honor.

22 Will we receive a transcript at government
 23 expense?

24 THE COURT: I wish I could answer that.

25 MR. LEVAL: This is not a C. J. A. case, your Honor.

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2 THE COURT: The plaintiff has already filed an
3 in forma pauperis application, has he not?

4 MR. LEVAL: Yes, your Honor.

5 THE COURT: I am pretty sure I can authorize
6 payment of half of it, I think, in view of the fact that
7 Mr. Hammer is ordering the transcript and the petitioner
8 is filing in forma pauperis, so then the State will pay
9 for half of the cost of the transcript.

10 MR. HAMMER: Fine.

11 THE COURT: All right, you work it out and I will
12 sign whatever form you submit to me for payment of half of
13 the total cost of the transcript.

14 I want to thank both of you gentlemen for your
15 efforts, and especially Mr. Leval who is serving pro bono
16 publico, for performing so conscientiously, and I
17 congratulate both of you on your very able presentation.

18 MR. LEVAL: Thank you, your Honor.

19 MR. HAMMER: Thank you, your Honor.

20 (Adjourned sine die.)

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2 WITNESS INDEX

3	Name	4	Direct	Cross	5 Redirect	6 Recross
7	Milford Blackwell	8		16	22	
9	Rafael Ferrer		23			
10	Joseph Norton		29			
11	Americo Lluveras		34	66	81	
12						

9 EXHIBIT INDEX

10	Petitioner	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	In	Identification	Evidence
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Petitioner's Exhibit I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA ex rel. :
AMERICO LLUVERAS,

Relator, : 71 Civ. 493
: ELP

-against-

HON. J. EDWIN LaVALLEE, Superintendent, : STIPULATION
Clinton Correctional Facility, :
Dannemora, New York,

Respondent. :
-----X

IT IS HEREBY STIPULATED by and among the Relator,
Americo Lluveras, through his counsel Pierre N. Leval, and
the Respondent, through counsel, the Attorney General of
the State of New York, as follows:

1. On May 5, 1960 between 4:00 and 5:00 P.M.,
the petitioner, Americo Lluveras, surrendered himself to
the police and was taken to the 24th Precinct station.
2. Lluveras was held in confinement throughout the
night at the police station (excepting a brief period when
he was taken by police to be exhibited to a witness.)

3. Lluveras was questioned intermittently by the police throughout the night. The questioning was continued in the morning by Assistant District Attorney Sandler who, at about 8:00 A.M. took a formally transcribed Q and A over 70 pages long which lasted for about one and one half hours.

4. At no time from the moment of his confinement between 4:00 and 5:00 P.M. through the end of the Q and A at 9:30 A.M. the next morning did Lluveras have any opportunity to sleep.

5. The police did not at any time during the night advise Lluveras of any right to remain silent, or to have counsel or warn him that his statements would be used against him. The Assistant District Attorney did not advise Lluveras of any rights during his preliminary questioning. At the start of the formal Q & A at 8:00 A.M. he advised Lluveras of his right to remain silent, which was the first and only warning Lluveras received as to any of his rights.

6. Lluveras at the time was a narcotics addict. This fact was known to the police. He was described in an alarm issued shortly prior to his arrest as a heavy narcotics user.

7. From the time of his confinement throughout the

night and the next morning, Lluveras received no drugs or medications.

8. Lluveras's confession was introduced into evidence against him at his trial.

9. The transcription of the Q & A (71 pages in length) has been lost, either by the District Attorney's office or the courts.

For the Respondent:

Louis J. Lefkowitz, Attorney General

By: /s/ Robert S. Hammer
Robert S. Hammer, Esq.
Assistant Attorney General

For the Relator:

/s/ Pierre N. Leval
Pierre N. Leval, Esq.

November 21, 1974

Opinion of the District Court

E.P. CIV 98 OPIN 543

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA ex rel.	:	
AMERICO LLUVERAS,	:	
Petitioner,	:	71 Civ. 493
-against-	:	(ELP)
J. EDWIN LA VALLEE, Warden, Clinton	:	#41954
Correctional Facility,	:	
Respondent.	:	

-----X

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ROBERT HAMMER, ESQ.
Of Counsel

Opinion

PALMIERI, J.

This is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner seeks to vacate his conviction on the ground that the confession received against him at trial was involuntary because obtained while he was undergoing narcotic withdrawal. For reasons herein-after stated the motion is granted.

I. PRIOR PROCEEDINGS

On December 15, 1960, Americo Lluveras was convicted after a jury trial in the Court of General Sessions of New York County of three counts of first degree robbery, and sentenced on March 1, 1961, to three concurrent sentences of 10 to 30 years in the State Prison. Lluveras served twelve years and is now on parole.

The conviction was appealed unsuccessfully, People v. Lluveras, 19 A.D.2d 525, 240 N.Y.S.2d 364 (1st Dep't 1963), leave to appeal denied (July 9, 1963, Fuld, J.), reapplication denied (January 19, 1965, Fuld J.), cert. denied, 380 U.S. 986 (1965).

On September 21, 1965, Lluveras filed a petition

Opinion

in the Supreme Court of New York County for a writ of coram nobis, alleging inter alia that his confession was inadmissible because obtained by coercion. After a Huntley hearing at which the State court refused to permit expert medical testimony on the effect of narcotic withdrawal upon the voluntariness of a confession, the petition was denied in an opinion of June 22, 1966, Davidson, J., and an order entered to that effect on July 29, 1966.

This order was also appealed unsuccessfully.

People v. Lluveras, 31 A.D.2d 892, 299 N.Y.S.2d 100 (1st Dep't 1969), leave to appeal denied (March 20, 1969, Fuld, C.J.), reapplication denied (June 19, 1969, Fuld, C.J.), cert. denied 398 U.S. 994 (1969).

Having exhausted his state remedies, Lluveras on February 4, 1971, filed a petition for a writ of habeas corpus in this court, alleging substantially the same claims set forth in the state coram nobis proceeding. We dismissed the petition without a hearing in a memorandum endorsement filed June 2, 1971, United States ex rel. Lluveras v. La Vallee, Pro Se 71 Civ. 493, on the ground that petitioner's charges that his confession was induced by force, threats and coercion,

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that he was not advised of his right to remain silent, and that he was not advised of his right to counsel, had been fully and fairly considered at the Huntley hearing.

An appeal was taken from this order to the Court of Appeals, which, on September 30, 1971, vacated the dismissal and directed the District Court "to conduct an evidentiary hearing on the issue of the voluntariness of Lluveras' confession."

The sole point pressed at this hearing was that at the time he confessed petitioner was undergoing narcotic withdrawal so severe as to render his confession involuntary.

II. STATEMENT OF FACTS

On May 4, 1960, Lluveras became aware that detectives were looking for him at his home, whereupon he went to the home of friends and spent the night taking drugs. After breakfast on the morning of May 5, 1960, at about 10:00 a.m., Lluveras telephoned his mother and learned that the police were still at his home. He spoke to one of the officers and upon being told that he was wanted for questioning said that he would go straight to the police station

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himself. Instead, he returned to his friends and took a heroin injection at about noon. In the early afternoon Lluveras called the officers at his mother's house and advised them that he was coming home. At about 3:00 p.m. he returned home, had a glass of milk and some cake or pie, and went with the officers to the police station, where he arrived at approximately 4:30 p.m. He was not questioned immediately but remained in a waiting room for several hours.

Lluveras testified that he began to feel edgy at about 5:00 p.m. and finally at about 6:30 p.m., feeling the effects of his noon heroin injection rapidly wearing off, asked if he might leave and return, his intention being to take another injection. He was not permitted to leave but was interrogated intermittently throughout the night until at 8:00 a.m. a seventy page formally transcribed "question and answer" (hereinafter Q & A) statement, lasting an hour and a half, was taken by an Assistant District Attorney. Throughout the seventeen hours of confinement and interrogation petitioner had no food, drugs or sleep. During this interrogation petitioner confessed to a large number of crimes, including apparently some he did not commit, infra.

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His confession recorded in the Q & A was received against him at trial. At no time during the night did the police advise Lluveras of his right to remain silent or to have an attorney, nor did they warn him that his statements would be used against him. The Assistant District Attorney did not advise Lluveras of any rights during his preliminary questioning. At the start of the formal Q & A at 8:00 a.m. he advised Lluveras of his right to remain silent, which was the first and only warning Lluveras received as to any of his rights.

That Lluveras was a heavy user of narcotics was a fact known to the police, who included it in the alarm issued shortly prior to petitioner's arrest. At the time of this interrogation Lluveras had been deeply addicted to narcotics for approximately six years. He had been introduced to drugs as a young teenager and began to take heroin by intravenous injection at the age of sixteen. Petitioner was hospitalized for five months in 1956 after an arrest for heroin possession, and imprisoned for three years from 1956 to 1959 and one month in 1959, but quickly returned to his habit after each release. At the time of this arrest

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Lluveras was taking up to five heroin injections a day on a \$25 - \$40 a day habit. At the State coram nobis hearing both arresting officers testified that they had observed during their interrogation that petitioner was experiencing withdrawal, although they differed with petitioner as to the severity of his symptoms.

III. DISCUSSION

At the threshold the parties are divided as to which side bears the burden of proof. We find that we need not resolve this issue, for even if the burden is cast upon petitioner, he has satisfied the "totality of the relevant circumstances" test by which the voluntariness of his 1960 confession must be judged. Culombe v. Connecticut, 367 U.S. 588, 606 (1960); Davis v. North Carolina, 384 U.S. 737, 740 (1966); United States ex rel. Ward v. Mancusi, 414 F.2d 87, 89 (2d Cir. 1969).¹

This case presents a very close and difficult factual issue. At a distance of nearly fifteen years from the events in question we cannot say with certainty what occurred. Unfortunately, the seventy page Q & A taken the morning after the night of interrogation, which would help

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us to gauge Lluveras' condition at the time he made the confession received against him at trial, has been lost by the State and we are dependent upon the few brief excerpts from it quoted in the Huntley hearing transcript. Nevertheless, the following picture emerges.

On May 5, 1960, petitioner, a known addict, took his last injection of heroin at about noon. He had breakfasted at about 9:30 a.m. and eaten a light snack at 3:00 p.m. He arrived at the police station at about 4:30 p.m. and remained there until his interrogation began several hours later. Questioning continued intermittently throughout the night until 8:00 a.m. when a formal Q & A lasting an hour and a half was taken. During this entire period from 4:30 p.m. to 9:30 a.m. Lluveras had no drugs, no food and no sleep. Seven hours elapsed between petitioner's last injection and the beginning of his questioning, at which time the effects of that injection were already wearing off. Petitioner testified that during that night he underwent all the symptoms typically associated with narcotic withdrawal: jittery restlessness, yawning and twitching, running nose, watery eyes, cold chills, severe abdominal cramps, nausea, vomiting,

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diarrhea and hot and cold sweats.

Lluveras' testimony as to his physical symptoms was confirmed by the expert testimony of Dr. Milford Blackwell, Dr. Blackwell, a psychiatrist presently associated with the State of New York, Department of Social Services, Office of Vocational Rehabilitation, has had ten years of wide experience in the treatment of drug addiction, and was for eight years Clinical Instructor in Neurology at the New York University Medical College. Dr. Blackwell testified that he had taken petitioner's medical history and that there were needle tracks in his arms corroborating a long history of insertion of needles in his veins. The doctor stated that someone on a \$30 a day habit would begin to experience withdrawal within six or seven hours of his last injection and that the symptoms would become progressively more debilitating as deprivation continued. It was his opinion that these symptoms combined with the element of fatigue during a period of prolonged interrogation would render a confession obtained under these circumstances involuntary, due to the subject's desire to placate his questioners by saying what was expected in order to get some relief and

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end the interrogation.

The Huntley hearing transcript and the Q & A quotations therein provide some corroboration for Dr. Blackwell's thesis. Lluveras testified that he was shown a list of crimes and confessed to them all, but was then told that some had occurred while he was incarcerated. He also attempted to confess to a murder which he did not commit. The State presses the fact that he ultimately did not confess to the murder as proof that his will was not overborne. However, it appears that Lluveras tried to confess but when he could not describe the place where the murder occurred or give any details, he finally said that he could not admit it.

We find then, that the confession received against petitioner was given after he had been without sleep for twenty-four hours, without food for eighteen hours (having eaten only lightly before that), and without drugs for nearly twenty-one hours. Set against his prolonged confinement and questioning, Lluveras' weakened condition from lack of food and sleep coupled with the pains of withdrawal which, given the depth and duration of his addiction cannot have been inconsiderable, persuade us that his confession

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was not "the product of a rational intellect and from will," Blackburn v. State of Alabama, 361 U.S. 199, 208 (1959), but rather the product of a "will...overborne," Reck v. Pate, 867 U.S. 433, 440 (1960), and therefore constitutionally inadmissible.

In finding for petitioner we do not profess to underwrite his credibility on every issue, nor is it our intention to make light of the good faith of the police or their efforts in this case.

We also do not intend to suggest parameters for future cases of this kind. Drug addicts are quite capable of giving reliable testimony, as this Court has had frequent occasion to observe. We are dealing here with a period of withdrawal and although many courts have recognized that the painful symptoms of withdrawal may invalidate a confession obtained under their influence "[t]here is no per se rule mandating that confessions made under such circumstances are inadmissible." United States v. Arcediano, 371 F. Supp. 457, 466 (1974). Compare Ortiz v. United States, 313 F.2d 450 (9th Cir. 1963), cert. denied 376 U.S. 953 (1964); United States ex rel. Sadler v. Com. of Pa., 306 F. Supp. 102

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(D. Pa. 1969), aff'd, 434 F.2d 997 (3d Cir. 1970); and United States v. Young, 355 F. Supp. 103 (1973), upholding statements made in the course of withdrawal, with United States ex rel. Collins v. Maroney, 287 F. Supp. 420, 422-23 (E.D. Pa. 1968) wherein the confession of a heavy drug user made eighteen hours after his last injection was found not voluntary, and his eighteen year old conviction vacated. Implicit in the "totality of the relevant circumstances" test of voluntariness, supra, is the requirement that each case be closely scrutinized and decided on its own facts. Among the factors to be considered in assessing these facts are "the length, intensity and frequency of interrogation; [and] the existence of physical deprivation or mistreatment" Brown v. United States, 356 F.2d 230, 232 (10th Cir. 1966). In the present case it is the totality of the effects of lack of sleep, lack of sustenance, and mounting withdrawal pains coupled with a long confinement and interrogation which compel our finding that petitioner's confession was not voluntary.

The excellent representation of petitioner by appointed counsel is gratefully acknowledged.

The petition is granted.² It is so ordered.

Dated: New York, N.Y.
February 25, 1975

/s/ Edmund L. Palmieri
EDMUND L. PALMIERI
U. S. D. J.

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FOOTNOTES

1. The holdings of Escobedo v. Illinois, 378 U.S. 473 (1964) and Miranda v. Arizona, 384 U.S. 436 (1966), are not retroactive, Johnson v. New Jersey, 384 U.S. 719 (1966), and therefore not relevant to the 1960 confession here in issue.
2. If counsel for the petitioner seeks a more formal order, it should be submitted on notice.

Order Granting Writ of Habeas Corpus

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA ex rel.	:	
AMERICO LLUVERAS,	:	
Relator,	:	<u>ORDER</u>
HON. J. EDWIN LA VALLEE, Superintendent,	:	75 Civ. 493
Clinton Correctional Facility,	:	ELP
Dannemora, New York,	:	
Respondent.	:	

-----X

This proceeding have duly come on for a hearing on November 21, 1974 and due deliberation thereon having been had and the Court having rendered and filed its opinion; it is

ORDERED AND ADJUDGED that the petition for a writ of habeas corpus herein be and the same is hereby granted, that the judgment of conviction upon a jury verdict for robbery in the first degree, three counts, of the former Court of General Session of New York County, dated March 1, 1961, be and the same is hereby vacated, and set aside, and that the Relator be and it is hereby directed that he be discharged from the custody of the New York State Division of Parole Unless retried

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in Supreme Court, New York County on Indictment No. 4546/1960
within sixty (60) days hereof; and it is

ORDERED, that if a timely notice of appeal is filed
on behalf of respondent, this order and judgment of the Court
herein shall be stayed pending determination thereof.

Dated: New York, New York
March 21, 1975

/s/ EDMUND L. PALMIERI
U. S. D. J.

Notice of Appeal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel. : 71 Civ. 493 ELP
AMERICO LLUVERAS, :
Petitioner, : NOTICE OF APPEAL
HON. J. EDWIN LA VALLEE, Superintendent, :
Clinton Correctional Facility, etc. :
Respondent. :

NOTICE IS HEREBY GIVEN that the Respondent hereby appeals to the United States Court of Appeals for the Second Circuit from the final order entered herein on March 21, 1975.

This appeal is taken pursuant to 28 U.S.C. § 1291.

Dated: New York, New York
April 21, 1975 Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
By

ROBERT S. HAMMER
Assistant Attorney General
Attorney for Respondent
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. 488-3394

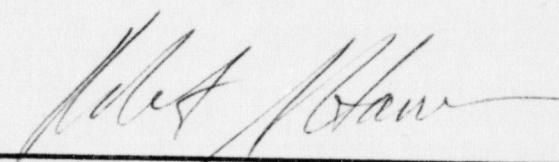
TO: ROBERT N. COWEN, ESQ.
Attorney for Petitioner
c/o Cleary, Gottlieb, Steen & Hamilton
One State Street Plaza
New York, New York 10004

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

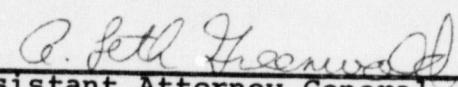
ROBERT S. HAMMER being duly sworn, deposes and
says that he is an / Assistant Attorney General
in the office of the Attorney
General of the State of New York, attorney for appellant
herein. on the 13th day of June , 1975, he served
the annexed upon the following named person :

ROBERT N. COWEN, ESQ.
Attorney for Appellee
c/o Cleary Gottlieb Steen & Hamilton
One State Street Plaza
New York, N.Y. 10004

Attorney in the within entitled appeal by depositing
a true and correct copy thereof, properly enclosed in a post-
paid wrapper, in a post-office box regularly maintained by the
Government of the United States at Two World Trade Center,
New York, New York 10047, directed to said Attorney at the
address within the State designated by him for that
purpose.


ROBERT S. HAMMER

Sworn to before me this
13th day of June , 1975


Assistant Attorney General
of the State of New York